Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

RONNIE MICKENS and
GLORIA J. MICKENS,

Petitioners

v.

STEWART TITLE GUARANTY COMPANY,
et al.,

Respondents

Petition for a Writ of Certiorari to the
United States Court of Appeals
Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

PRO SE
RONNIE MICKENS and GLORIA J. MICKENS
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QUESTIONS PRESENTED FOR REVIEW

1. Whether the district court and the appeal court decisions conflict with the decisions of the United States Supreme Court and with the authorities' decisions of every other District and United States Court of Appeals that has addressed these issues.

2. Whether the Rooker-Feldman doctrine is being used as a pretext to conceal respondents' fraudulently obtained state court final judgments, theft, extrinsic fraud, conspiracy and their fraudulent violations of the very strict requirements of Florida Statutes, Sections 689.01, 117.05, and 117.107 for a premium.

3. Whether Rooker-Feldman doctrine bars the District Court's subject matter jurisdiction when petitioners allege that the respondent's fraud, theft, conspiracy and extrinsic fraud on the state court obtained two fraudulent and frivolous

final judgments against petitioners as awards for their fraudulent actions and for violating the principles of issue preclusion, res judicata, the law of the case, stare decisis, jurisdictional standings, bona fide purchaser for value, right of action, cause of action, indispensable parties, respondeat superior and unclean hands.

4. Whether it is legally possible for the respondents to obtain valid state court final judgments against petitioners and petitioners' private residential real property because of their violations of the very strict requirements of Florida Statutes, Section 689.01, 117.05, 117.105, 117.107 and unlawfully benefited from an insurance premium.

5. Whether Rooker-Feldman doctrine bars the District Court's subject matter jurisdiction when petitioners allege indisputable statutory fraud, cancellation of deed, quiet title, ejectment, breach of construction contract, notary's failure to validate signatures, notary's malfeasance and misfeasance in the conduct of official duties, notary's false or fraudulent

acknowledgment, notary's performance of prohibited acts, equitable estoppel, civil conspiracy, negligence, conversions, fraudulent conveyance, and slander of title claims and causes of actions.

6. Whether Rooker-Feldman doctrine bars the District Court's subject matter jurisdiction wher petitioners second amended complaint alleges six additional non-governmental indispensable parties, three new governmental parties, independent section 1983 substantive, procedural and stigmatization due process claims, independent section 1983 equal protection and first amendment claims, independent section 1985 (3) conspiracy claims, independent Title VII retaliation and race claims, independent extrinsic fraud claims, ten new state court claims along with five previous causes of action adjudicated in petitioners favor.

7. Whether the District court has parallel and concurrent subject matter jurisdiction especially when the district court

admitted that the initial state court lawsuit, Case No. 1997CA-0455 was incomplete when Appellants commenced this federal action in the district court and because Case No. 1998CA-1152 is still viable and pending trial in state court.

8. Whether respondents' extrinsic fraud on the state court fraudulently fabricated state court Case No. 1998CA-2977 as a pretext to abort the issues, facts and indispensable parties, to malicious prosecute petitioners, and to fraudulently fabricate findings contrary to the findings adjudicated in state court Case No.1997CA-0455.

9. Whether the Rooker-Feldman doctrine bar the district court's subject matter jurisdiction when petitioners alleged that respondent's extrinsic fraud on the state court split one lawsuit into three separate lawsuits to violate petitioners substantive and procedural due process rights.

10. Whether Respondent Allen Damron Construction had a right, interest, claim, title or authority to convey petitioners'

real property via a "special warranty deed" to Respondent Stewart Title Guaranty Company.

LIST OF PARTIES' JUDGMENTS SOUGHT TO BE REVIEWED

Stewart Title Guaranty Company

Stewart Title of Polk County, Fla.

Allen Damron Construction Company

Allen Damron

Debra Damron

Elaine P. Canady

Edith F. Rewis

Polk County State Attorney

Polk County Sheriff

Polk County Property Appraiser

LIST OF PARENT OR PUBLICLY HELD COMPANY TO BE LISTED

Stewart Information Service Corporation (SISCO)

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IN THE

SUPREME COURT OF THE UNITED STATES

No.

RONNIE MICKENS and GLORIA J. MICKENS

Petitioners,

vs.

STEWART TITLE GUARANTY CO.,
ALLEN DAMRON CONSTRUCTION CO.,
ALLEN DAMRON, DEBRA DAMRON,
ELAINE P. CANADY, EDITH F. REWIS,
POLK COUNTY STATE ATTORNEY,
POLK COUNTY SHERIFF,
POLK COUNTY PROPERTY APPRAISER

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Ronnie Mickens and Gloria J. Mickens respectfully and desperately petition for a writ of certiorari to review the judgment of the district court and the opinion of the Eleventh Circuit Court of Appeals.

OPINIONS BELOW

The opinion of the Eleventh Circuit Court of Appeals has not been reported. (See App.)

JURISDICTIONAL STATEMENT

Jurisdiction is based on a United States Court of Appeals that has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter and has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. The dates of the orders that petitioners Mickens are seeking to be reviewed are July 11, 2006, May 22, 2006, September 19, 2005, September 9, 2005 and August 29, 2005.

STATUTORY PROVISIONS INVOLVED

This appeal concerns whether the Rooker-Feldman doctrine bars the federal district court's subject matter jurisdiction when state court judgments were obtained in

violation of Florida Statute Chapter 65, 66, , 812 and Florida Statutes, Sections 689.01, 117.05, 117.105, 117.107, 831.01, 831.02 and in violation of due process and equal protection principles such as jurisdictional standing, right of action, cause of action, unclean hands, bona fide purchaser for value, indispensable parties, issue preclusion, res judicata, the law of the case and stare decisis.

STATEMENT OF THE CASE AND FACTS

This case is about whether the Rooker-Feldman doctrine bars the district court's subject matter jurisdiction when petitioners allege that the Rooker-Feldman doctrine is being used as a pretext to deprive petitioners of due process and equal protection of the laws. The respondents obtained title by violating the very strict requirements of Florida Statutes, Section 689.01, 117.05, 117.105, and 117.107. Rooker-Feldman doctrine does not bar the district court's subject matter jurisdiction when respondents' fraud aborted the joinder of indispensable parties and petitioners causes of

action. The district court has parallel and concurrent jurisdiction. The complaint includes independent constitution claims, new evidence, new governmental and non-governmental parties, new statutory claims and the below adjudicated issues, facts, findings, claim and orders.

As a matter of law it is impossible for respondents to be lawfully awarded a valid $234, 854.64 final judgment and a valid foreclosure final judgment against petitioners and petitioners property to benefit them for fraudulently making, preparing, executing, witnessing, notarizing, delivering and recording a quitclaim deed in violations of the very strict requirements of Florida Statutes, Section 689.01, 117.05, 117.105 and 117.107. It is inconceivable how Respondents Stewart Title Guaranty Company can violate the laws that protect petitioners private property rights on one hand and on the other hand, obtain two final judgments that award Respondents Stewart Title Guaranty Company a $234.854.64 money judgment and petitioners private real property.

Without legal or equitable standing the respondents extrinsic fraud obtained a arbitrary, capricious, and pretextual malicious prosecution trial against petitioners in Case No. 1998CA-2977 to fraudulent supplant the below adjudicated issues, facts, findings, claims a d orders with the contrary and conflicting arbitrary, capricious, pretextual, fraudulent facts fabricated in Case No. 1998CA-2977. The District Court and the Eleventh Circuit Court of Appeals erred when they misrepresented that the below adjudicated issues, facts, findings, claims, and orders determined in Case No. 1997CA-0455 were reversed by the Second District Court of Appeals.

FACTS:

On May 4, 1996, Petitioners, Ronnie Mickens and Gloria J. Mickens ("the Mickens"), entered into a residential construction contract with Respondent Allen Damron Construction Company ("Damron Construction"), which provided that the Mickens' property would be "temporarily

subrogated" to Damron Construction and released back to the Mickens at the final closing.

On August 12, 1996, Allen Damron, owner and President of Damron Construction, obtained the Mickens' signature on a blank quitclaim deed to the property.

Without informing the Mickens and knowing that the Mickens already had available a conventional construction VA insured loan for the construction of the home, Damron Construction recorded this deed in the official record books of Polk County, Florida and entered into a mortgage with Chase Financial FBS using the Mickens' property as collateral for a construction loan.

As a result of the above referenced construction contract and quitclaim deed, a residential structure and pool exists on the Mickens' property.

Damron Construction now claims ownership of the property and has sought to eject the Mickens from their property. In response, the Mickens have brought this action

to cancel the August 12, 1996 deed, quit title in the said property in them, find Damron Construction in breach of the construction contract, and eject Damron Construction who has occupied their property by placing a residential structure on the Mickens's property.

Based on these facts and the evidence presented at trial, the Court has made the following findings on the issues raised by the parties.

A. THE AUGHST 12, 1996 DEED:

Damron Construction, through the person of Allen Damron, intentionally misrepresented the nature of the deed signed by the Mickens, by purposely creating the false impression that the deed would temporarily subrogate the Mickens' property, Damron Construction intended to and in fact did gain the Mickens' reliance on these misrepresentations and obtained their signature on a blank quitclaim deed. As evidenced by their subsequent actions,the Mickens never intended to relinquish absolute and

unconditional control over their property to Allen Damron Construction Company or any other claimant.

Because of their reliance on Damron Construction's misrepresentations, the Mickens have suffered damages including, but not limited to, the imposition of a mortgage on their property without their knowledge or consent.

Damron Construction, through the person of Allen Damron, failed to execute the above referenced deed in the presence of two witnesses as required by Section 689.01, Florida Statutes.

Damron Construction's action and misrepresentations constitute fraud in the execution of the August 12, 1996, quitclaim deed.

Based on the above findings, it is hereby **ORDERED** and **ADJUDGED** that the August 12, 1996, quitclaim deed is **VOID AB INITIO.**

B. THE CONSTRUCTION CONTRACT:

The construction contract contained a list of specification and allowances for specific features as part of the contract. Damron Construction breached the construction contract by:

1. Failing to perform work of good quality free from faults and defects:

2. Failing to submit change orders in writing as required by the contract;

3. Failing to have change orders approved by the Mickens as required by the contract;

4. Failing to close the loan commitment with the Mickens' bank, NationsBank, and thereby depriving the Mickens of a VA protected construction loan: and

5. Failing to pay all sub-contractors as required by the contract.

It is therefore **ORDERED** and **ADJUDGED** that the Mickens' claims for damages including fees, and cost is

GRANTED. See Allen Damron Const. Co., v. Mickens, 725 So. 1174.

The respondents extrinsic fraud on the state court fraudulently obtained final judgments based on a fraudulent, arbitrary, capricious, pretextual post-trial/appeal "Order on a Motion For Failure to Permit Discovery" and a "Trial Order" against petitioners that the federal district court and the appeal court adopted as proof of Petitioners Mickens being state court losers. The federal district court and appeals court fundamentally erred and abused their discretion when they failed to acknowledge and consider the meritorious above adjudicated issues, facts, findings, claims, orders, and Case No. 1998CA-1152. The district court erroneously asserted that the judgment on the merits in Case No. 1997CA-0455 were reversed by the Second District Court of Appeals. The Rooker-Feldman doctrine is being used as a pretext to fraudulent conceal the meritorious adjudicated issues, facts findings, claims and orders determined in petitioners favor.

The above findings resolved all of the legal pertinent issues.

ARGUMENT I

THE ELEVENTH CIRCUIT MISPERCEIVED THE NARROW GROUND OCCUPIED BY ROOKER-FELDMAN, AND CONSEQUENTLY ERRED BY DISMISSING FEDERAL ACTION FOR LACK OF SUBJECT-MATTER JURISDICTION

It has long been the law that a plaintiff in federal court can seek to set aside a state court judgment obtained through fraud. In Barrow v. Hunton, 99 U.S. (9 OHO) 80, 25 L. Ed. 407 (1878), the Supreme Court distinguished between errors by the state court, which could not be reviewed in federal district court, and fraud on the state court, which could be the basis for an independent suit in the federal court. See Mackay v. Feil, 827 F. 2d 540, 543-44 (9th Cir. 1987).

Extrinsic fraud on a court is, by definition, not an error by that court. It is, rather, a wrongful act committed by the parties who engaged in the fraud. The Rooker-Feldman doctrine therefore does not bar the federal district court

subject matter jurisdiction when petitioners alleges independent claims of extrinsic fraud on the state court and seek to set aside final judgments obtained by that fraud. In the words of Noel v. Hall, 341 F. 3d 1148, 1154 (9th Cir.2003), petitioner's does not assert "as a legal wrong an allegedly erroneous decision by a state court" but rather "an allegedly illegal acts or omissions by adverse parties.

WHEREFORE, Petitioners, Ron Mickens and Gloria J. Mickens pray that this court reverse and remand for a trial.

ARGUMENT II

THE DISTRICT COURT AND THE ELEVENTH CIRCUIT ERRED WHEN IT FAILED TO ACKNOWLEDGE THAT THERE IS PARALLEL AND CONCURRENT JURISDICTION

When there is parallel state and federal litigation, Rooker-Feldman is not triggered simply by the entry of judgment in state court. Rooker nor Feldman supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment on the same or related

question while the case remains sub judice in a federal court. The district court has parallel jurisdiction with state court case no. 1998-CA-1152. The district court admitted that petitioners commenced this federal action before state court case no. 1997-CA-0455 was considered to be complete in state court. The District Court erroneously adopted the arbitrary, fraudulent, pretextual, conflicting findings unauthorized De Nova "Trial Order" in case no. 1998-CA-2977. The adjudicated issues, facts, findings, claims, orders and six indispensable parties were aborted. The purported foreclosure lawsuit lacked a cause of action and a mortgagee defendant. The issue whether Respondent Stewart Title Guaranty Company, it's employees and agents violated Florida Statutes, Sections 689.01, 117.05, 117.105, 117.107 and profited from an insurance premium were aborted. Respondents Stewart Title of Polk, Damron Construction, Allen and Debra Damron, Canady and Rewis were indispensable parties that were dropped and dismissed as

parties. The above respondents were permitted to conspire and testify adversely to fabricate evidence that contradicted the adjudicated issues, facts, findings, claims and orders determined in case no. 1997-CA-0455. Clearly, the District Court and the 11th Circuit Court of Appeals erred by not considering the adjudicated merits determined in case no. 1997-CA-0455. The respondents are using the Rooker-Feldman doctrine as a pretext to fraudulent conceal their unclean hands and to deprive petitioners of due process and equal protection of the laws. The respondents does not have any defenses to petitioners statutory causes of action. It is unconstitutional for respondents to be awarded a right, interest, claim, or title to petitioners' private real property or be awarded a $234,584.64 final judgment or a foreclosure final judgment as an award for violating the very strict requirements of Florida Statutes, Sections 689.01, 117.05, 117.105, 117.107. Petitioners Mickens note that petitioners

did not violate a court order to inspect property. The order was a ultra virez, pretextual order that had became moot by the joinder and consolidation of the cases before the cases were unconsolidated or split. The order to inspect property unlawfully compelled petitioners to accept a judgment that was undesired, unrequested and un-suppoted by the evidence. The inspection of property was for the obtainment of fraudulent and fabricated evidence.

WHEREFORE, Petitioners, Ron Mickens and Gloria J. Mickens pray that this court reverse and remand for a trial.

ARGUMENT IV

THE DISTRICT COURT AND THE ELEVENTH CIRCUIT ERRED WHEN IT FAILED TO APPREHEND THAT RESPONDENTS HAD OBTAINED TWO FINAL JUDGMENTS BY FRAUDULENTLY VIOLATING PETITIONERS RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS

As a result of petitioners seeking full relief, the respondents' extrinsic fraud on the state courts obtained two fraudulent and frivolous final judgments against

petitioners. The respondents extrinsic fraud violated principles of due process by violating issue preclusion, res judicata, the law of the case, stare decisis, by splitting one lawsuit into three lawsuits, by aborting indispensable parties, by violating principles of unclean hands, bona fide purchaser for value, right of action, cause of action, legal and equitable standings. Respondents fraudulently used a arbitrary, capricious, pretextual order to inspect property to deprived petitioners of a final judgment supported by the pleading, the evidence and requested by petitioners. The order to inspect property had become moot . Respondents extrinsic fraud un-joined indispensable parties and un-consolidated the cases into three cases to arbitrarily, capriciously, and pretextually obtained a $234,584.64 final judgment purportedly for petitioners failing to permit discovery/failing to permit inspection of property in case no. 1997-CA-0455 and a arbitrary, capricious, pretextual, fabricated and fraudulent foreclosure/equitable lien.

The respondents' extrinsic fraud permitted them to maliciously prosecute a foreclosure action without a mortgage, a mortgagee defendant or a cause of action. Petitioner Mickens note that Respondent Stewart Title Guaranty Company and Petitioners Mickens were the only two parties in the lawsuit, case no. 1998-CA-2977. Clearly,the respondents' fraud, conspiracy and extrinsic fraud used case no. 1998-CA-2977 to arbitrarily, capriciously, pretextually, fraudulently create fabricated facts and findings and to fraudulent purport that all indispensable parties were involved in litigation of the issues.

WHEREFORE, Petitioners, Ron Mickens and Gloria J. Mickens pray that this court reverse and remand for a trial.

ARGUMENT V

THE DISTRICT COURT AND THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED WHEN IT FAILED TO APPREHEND, CONSIDER , OR ACKNOWLEDGE RESPONDENTS VIOLATIONS OF FLORIDA STATUTES, SECTION 689.01 "HOW REAL ESTATE IS CONVEYED" IN THE STATE OF FLORIDA

The respondents violations of the strict requirements of Florida Statutes, Section 689.01 cannot create, make, grant, transfer or release any interest, right, claim or title. The District Court and the 11th Circuit Court of Appeals erred by failing to acknowledge Respondents Stewart Title Guaranty Company, it's employees and agents violations of the very strict requirements of Florida Statutes, Sections 689.01, 117.05, 117.105, 117.107. Florida Statutes, Sections 689.01 states in pertinent part:

> "No estate…or any uncertain interest of, in or out of any …lands …shall be created, made, granted, transferred or released in any manner than by instrument in writing, signed in the presence of two subscribing witnesses by party creating, making, granting, conveying, transferring or releasing such estate, interest, …and no estate …or any uncertain interest of, in to or out of any …lands…shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's agent thereunto lawfully authorized, or by the act and operation of law."

Section 117.05 "Notary's failure to validate signatures"
Section 117.105 "Notary's fraudulent Acknowledgment"
Section 117.107 "Notary's performance of prohibited acts"

If a deed does not comply with the statutory requirements of Florida Statutes, Section 689.01 the deed does not create any legal rights in the real property. See Girard v. Trembley, 384 So. 2d 39 (Fla. 3d DCA 1980); Walker v. City of Jacksonville, 360 So. 2d 52 (Fla. 1st DCA 1978).

The Rooker-Feldman doctrine does not bar the federal district court's subject matter jurisdiction in this case at bar because respondents fraudulently obtained two final judgments in violation of F.S. 65, 66, 689.01, 117.05, 117.105, 117.107, 831.01, 831.02. The respondents fraudulently conveyed petitioners private real property to benefit from an insurance premium. Petitioners Mickens note that the acts constitute felony crimes. Felony crimes cannot create a right, interest, claim, and title or entitle final judgments in law and in equity against petitioners, the victim of respondents' crimes and torts. The respondents were awarded two final judgments to benefit them for their crimes

and torts against petitioners, the victims is outrageous.

The Rooker-Feldman doctrine does not apply because in April, 2004, the respondents fraudulently created and recorded in the Polk County Property Public Records without authority, a right, interest, claim or title a fraudulent "special warranty deed. Petitioners Mickens warranty deed was supplanted by a fraudulent deed from respondents Damrons to respondent Stewart Title Guaranty Company as if the Damrons were the title holders or owners of petitioners' property. The respondents fraudulent quitclaim deed did not convey any rights, interests, claims or title in petitioners' private real property to the Damrons. The April, 2004, fraudulent "special warranty deed is new evidence that support all of petitioners claims, both new and previous. Petitioners Mickens proved all of their claims in state court but respondents extrinsic fraud aborted all of petitioners claims. The district court and the 11th circuit court of appeals erred when it refused to acknowledge or apprehend that F.S.

Sections 689.01, 117.05, 117.105 and 117.107 bars or estopps all of respondents frivolous claims or defenses. Petitioners Mickens are the absolute and unconditional owners of the below describe real property.

Lot 42 Buckingham, according to the Plat thereof, as recorded in Plat Book 85, pages 15 and 16 of the Public Records of Polk County, Florida.

WHEREFORE, Petitioners, Ron Mickens and Gloria J. Mickens pray that this court reverse and remand for a trial.

ARGUMENT VI

THE DISTRICT COURT AND THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER OR APPREHEND THAT THIS IS THE FIRST TIME THAT INDISPENSABLE RESPONDENTS HAVE ALL BEEN JOINED IN ONE LAWSUIT AS DEFENDDENTS

The Rooker-Feldman doctrine does not bar the district's court subject matter jurisdiction because the respondents extrinsic fraud on the state courts obtained two final judgments without the joinder of Stewart Title Guaranty

Company, Stewart Title of Polk County, Canady, Rewis, Allen and Debra Damron in case no. 1997-CA-0455. In case no. 1998-CA-2977, Damron Construction company, Allen and Debra Damron, Stewart Title of Polk, Canady and Rewis was indispensable parties that were excluded by the respondents conspiracy and extrinsic fraud. The relationships and interests of the above parties are indispensable in resolving this litigation. Petitioners have not been afforded an opportunity to litigate against respondents Stewart Title of Polk, Canady, Rewis, Allen and Debra Damron as parties.

WHEREFORE, Petitioners Ron Mickens and Gloria J. Mickens pray that this court reversed and remand a trial.

ARGUMENT VII

THE DISTRICT COURT AND THE ELEVENTH CIRCUIT ABUSED IT'S DISCRETION WHEN IT DISMISSED WITH PREJUDICE NON-GOVERNMENTAL RESPONDENTS

The Rooker Feldman doctrine applies only when federal plaintiffs asserts as their injury legal error or errors by

state court, and seek as his remedy relief from state court judgment; doctrine does not apply when injury asserted is illegal acts or omissions by adverse parties. Petitioners Mickens will prevail on the merits of all causes of action as a matter of law against the respondents. Respondents violations of Florida Statutes, Sections 689.01, 117.05, 117.105, 117.107 requires that respondents two final judgment be set aside because the judgments are unconstitutional and must be declared null and void ab initio. The Rooker-Feldman doctrine does not authorize a dismissal with prejudice in this case at bar. The doctrine does not apply because of new evidence, claims, and parties, new independent extrinsic fraud and constitutional claims, the lack of a final judgment based on merits alleged, pled and litigated, and parallel and concurrent jurisdiction.

WHEREFORE, Petitioners, Ron Mickens and Gloria J. Mickens pray that this court reverse and remand a trial.

ARGUMENT VIII

THE ELEVENTH CIRCUIT ABUSED IT'S DISCRETION WHEN IT DETERMINED THAT PETITIONERS' EXTRINSIC FRAUD, SECTION 1983 CLAIMS, SECTION 1985(3) CLAIM AND TITLE VII CLAIMS WERE DUE TO BE DISMISSED BECAUSE PETITIONERS FAILED TO STATE DETAILED CAUSES OF ACTION

The Federal Rules of Civil Procedure require petitioners to state a claim upon which relief can be granted. Petitioners Mickens contend that the FRCP does not required petitioners to state a cause of action with all the required elements of a section 1983, section 1985(3), Title VII and extrinsic fraud causes of action at the initial complaint pleading stage. The respondents motions to dismiss does not tests whether complaint affirmatively states a cause of action, and such motion should be denied though complaint be infirm, if it appears that at trial plaintiffs might establish a cause of action. Motions for dismissal are directed at failure to state a claim upon which relief can be granted and not at failure to state a cause of action. Garcia v. Hilton Hotels, 97 F. Supp. 5.

The Rooker-Feldman doctrine and the Supreme Court's appellate jurisdiction over state courts judgments does not stop district court from exercising subject matter jurisdiction simply because party attempts to litigate in federal court a matter previously litigated in state court; if federal plaintiffs present some independent claims, albeit one that denies a legal conclusion that state court has reached in case to which he is a party, then there is jurisdiction and state law determines whether defendants prevail under preclusion law. 28 U.S.C.A. Section 1257. See Exxon Mobil Corp. v. Saudi Basic Corp., 125 S. Ct. 1517. The respondents obtained two final judgments outside the law.

WHEREFORE, Petitioners, Ron Mickens and Gloria J. Mickens pray that this court reverse and remand for a trial.

ARGUMENT IX

THE DISTRICT COURT AND THE ELEVENTH CIRCUIT ERRED WHEN THEY FAILED TO ACKNOWLEDGE THAT THE DISTRICT COURT HAVE PARALLEL AND CONCURRENT JURISDICTION WITH THE STATE COURT

The Eleventh Circuit Court of Appeals and the District Court admitted that the initial state court case (case no. 1997-CA-0455) was incomplete when petitioners commenced this case sub judice in the federal district court. The District Court and the 11th Circuit Court of Appeals failed to acknowledge that state court case no. 1998-CA-1152 is still pending trial in state court. The district court and the appeals court failed to apprehend that case no. 1998-CA-2977 was a fraudulent pretext that purported the consolidation and joinder of all indispensable parties and the litigation of all the issues. The respondents conspired and malicious prosecuted petitioners with unclean hands. The consolidation and joinder of the issues and parties were aborted so that the respondents could obtain two fraudulent final judgments against petitioners outside the law, due process and equal protections of the laws. The Second District Court of Appeals reversed petitioners final judgment entered on petitioner counterclaim

because the relief provided by the judgment was un-requested, undesired, unsupported by the evidence and objected to by petitioners. The Second District Court of Appeals did not reverse and remand for a new trial nor did it remand to take new or additional evidence. Therefore Respondent Stewart Title Guaranty Company frivolous foreclosure/equitable lien lawsuit were barred by issue preclusion, res judicata and the law of the case. The respondents' fraudulent act does not entitle them to any relief in equity or law.

WHEREFORE, Petitioners, Ron and Gloria J. Mickens pray this court reverse and remand for a trial.

REASONS WHY THIS CASE IS IMPORTANT TO PETITIONERS, TO OTHERS AND TO THE SOCIETY

This case is important to petitioners, to others and society because it will provide hope and opportunity for the little man and justice for all people. It will prevent big

companies like Stewart Title Guaranty Company from being above the law and depriving honest law abiding citizens like petitioners from the deprivation of "liberty" and "property" without due process and equal protections of the laws. This case will ensure that the laws are upheld and enforced by the judicial system to prevent similar crimes and torts.

CONLUSION

The respondents are using the Rooker-Feldman doctrine as a pretext to fraudulently conceal their fraud, theft, conspiracy, and extrinsic fraud on the state courts to deprive petitioners of due process and equal protection of the laws on the federal level. Fraudulent violations of F.S. Sections, 689.01, 117.05, 117.105, and 117.107 for a premium cannot create, make, transfer, convey, release any interests, rights, claims or title in petitioners title or create any entitlements to final judgments in law or equity in favor of respondents, the wrongdoers.

The Rooker Feldman doctrine does not apply because two final judgments were obtained through extrinsic fraud, new parties, additional indispensable parties that were excluded, independent extrinsic fraud claims, independent constitutional claims, parallel and concurrent jurisdiction, newly discovered evidence, final judgment based on the merits of claims that are alleged, pled and litigated, one lawsuit was split into three to discriminate against petitioners and to circumvent the law of the case, issue preclusion, res judicata and stare decisis.

Petitioners Mickens note that Respondent Allen Damron requested and obtained from petitioners a Xerox copy of petitioners drivers license to send off with his VA package. Petitioners Mickens did not give Allen Damron a photocopy of their driver's license. Petitioners Mickens did not find out about the respondents fraudulent conveyance and relationships until almost eight month later..

Respectfully Submitted,

Ron Mickens and Gloria J. Mickens
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APPENDICES

APPENDIX A

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

ALLEN DAMRON CONSTRUCTION CO.,
Plaintiff / Counter Defendant

Case No. GCG 97- 0455

Section 7

v.

RONNIE MICKENS and GLORIA J. MICKENS
Defendants / Counter Plaintiffs,

FINAL JUDGMENT ON COUNTER-PLAINTIFFS' COUNTER-CLAIM

This Cause came before this Court for a non-jury trial. Having heard extensive argument and testimony from the parties, having received evidence from the parties, and having considering the attendant credibility issues, the Court has found the following.

FACTS:

On May 4, 1996, defendants / counter-plaintiffs, Ronnie Mickens and Gloria J. Mickens ("the Mickens"), entered into a residential construction contract with plaintiff / counter-defendants, Allen Damron Construction Company

quit-claim deed. As evidenced by their subsequent actions, the Mickens never intended to relinquish absolute and unconditional control over their property to Allen Damron Construction Company or any other claimant.

Because of their reliance on Damron Construction's misrepresentation, the Mickens have suffered damages including, but not limited to, the imposition of a mortgage on their property without their knowledge or consent.

Damron Construction, through the person of Allen Damron, failed to execute the above referenced deed in the presence of two witnesses as required by Section 689.01, Florida Statutes.

Damron Construction's actions and misrepresentations constitute fraud in the execution of the August 12, 1996, quit-claim deed.

Based on the above findings, it is hereby **ORDERED** and **ADJUDGED** that the August 12, 1996, quit-claim deed is **VOID AB INITIO.**

B. THE CONSTRUCTION CONTRACT:

The construction contract contained a list of specification and allowances for specific features as part of the contract. Damron Construction breached the construction contract by:

1. Failing to perform work of good quality free from faults and defects;1

2. Failing to submit change orders in writing as required by the contract;

3. Failing to have change orders approved by the Mickens as required by the contract;

4. Failing to close the loan commitment with the Mickens' bank, Nations Bank, and thereby depriving the Mickens of a VA protected construction loan; and

5. Failing to pay all sub-contractors as required by the contract.

It is therefore **ORDERED** and **ADJUDGED** that the Mickens' claims for damages, including fees and costs, is **GRANTED.**

C. THE REMEDY -

The Court has determined that equity requires a remedy fashioned to justly compensate the Mickens for their damages but allow Damron Construction to extricate itself from a situation caused by its actions and obtain what financial benefit it might from the sale of the lot and residence.

Therefore, Damron Construction and any other interested parties shall have 90 days in which to purchase a residential lot selected by the Mickens for the sum of no less than $60,000.00 free and clear of any legal encumbrances. In conjunction with closing on the selected property, the Mickens shall deed the lot and residence which are the

subject of this action to Damron Construction or the stipulated claimant.

At the same time, the Mickens shall execute all necessary releases or satisfactions to Damron Construction or the other stipulated claimant so as to transfer full legal ownership of the lot and residence which is the subject matter of this litigation, and the Mickens shall accept the $60,000.00 residential lot as full satisfaction of their claim for damages and attorneys fees and costs.

Thereafter, the parties shall hold each other harmless from all claims, costs, and fees flowing from the aborted residential construction contract between the parties.

Upon completion of the above directed transactions, the Mickens should own, free and clear, a $60,000.00 residential lot of their choosing and will be responsible for their attorneys fees and costs.

Damron Construction or another stipulated claimant will receive full ownership of the lot and residence which is

the subject matter of this action from which to realize its fees and costs.

The Court will retain jurisdiction to consider the Mickens' quiet title and ejectment actions against Damron Construction and will consider those claims if these transactions do not occur.

DONE AND ORDERED in chambers this 27th day of January, 1998, at Bartow, Florida.

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1 The poor quality of the roof is a glaring example of the many faults and defects on the work performed by or at the direction of Damron Construction.

J. Tim Strickland
Circuit Court Judge

cc:

Joseph G. Bywater, Esquire
Post Office Drawer 2807
Lakeland, Florida 33806-2807

Brian E. Gray, Esquire
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APPENDIX B

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUITS IN AND FOR POLK COUNTY, FLORIDA

Case No. GCG 97-455

ALLEN DAMRON CONSTRUCTION CO.,
Plaintiff / Counter-Defendant

v.

RONNIE MICKENS AND GLORIA J. MICKENS
Defendants / Counter-Plaintiffs

ORDER ON MOTIONS FOR FINAL JUDGMENT

This Cause came before the Court on cross motions for final judgment following remand from the Second District Court of Appeal. Having heard argument, reviewed evidence in the record, and being otherwise advised on the merits, the Court finds the following:

Defendant, Ronnie and Gloria Mickens, bought a lot for $24, 995.00 on which to build a house. A local contractor drew up plans, specifications and allowances for their house.

Defendants intended to have this contractor build their house, but before any such agreement, Mr. Mickens met Allen Damron. Mr. Damron told Mr. Mickens that Allen Damron Construction Company could build the same house at a lower price and even offered some extra features, such as plant shelves and arches, for no additional cost. (T. 356)

After Mr. Mickens' initial conversation with Mr. Damron, Defendants began negotiations with Allen and Debra Damron (the Damrons) of Damron Construction (Damron). Negotiations took place at one of Damron's model homes. Defendants told the Damrons that the previous builder had been willing to build the house for $172,400.00. (T.363) This price did not include the lot but apparently did include the pool. Damron offered to build the house for less, but the Mickens offered to pay the same price if Damron included exterior columns in the price. (T.364) During negotiations, the parties agreed to include the value of the lot in the financing for the house. Consequently, the final

contract price reflected the cost of construction plus the value of the lot.

On May 4, 1996, the parties executed a construction contract that incorporated a list of specifications, features and allowances. Pursuant to the contract, Damron would provide the financing for the construction of the house. The total contract price was $197, 400.00, and the lot would be temporarily subrogated to Damron during construction and released back to Defendants at closing. After the contract was signed, it became apparent, that the parties disagreed on which list of specifications were incorporated into the contract. Defendants' original specifications included raised Formica cabinets and crown molding throughout the house. Damron claims that these specifications were changed to decrease the price of the house. (T.61) As a result, the specifications that Damron followed only required raised cabinets in the Kitchen and simply provided a $1,000.00 allowance for crown molding. It is also apparent, that the

parties disagreed as to what was included in the contract price. Defendants argue that the plaint shelves, french doors, the driveway, and brass fixtures in the sinks, tubs, and showers were included in the contract price. The parties also disagreed on the origin and application of the allowances that were attached to the contract. Defendants wanted to use the allowances provided for in their original plans. However, the allowances used by Damron did not match those original plans.

Defendants arranged for a VA insured loan with Nationsbank. The VA loan was not intended to finance the construction of the house. (T.234) Once construction was completed, Defendant's VA insured loan would pay off the financing obtained by Damron. Since the contract required Damron to finance the construction, Damron took out a construction loan from Chase Federal Bank. Damron needed a deed from Defendants showing a conveyance of some interest in the property. (T.229) One evening in August

1996, Mr. Damron brought an incomplete quit claim deed to the Defendants' apartment. (T.461) The Defendants were hesitant to sign a deed. To convince the Defendants to sign the deed, Mr. Damron assured them that the deed was necessary and that Damron had no intention of taking their land. However, Mr. Damron did not explain the interest that would be conveyed by the deed. Though Defendants signed the deed, Mr. Mickens testified that he thought he was simply giving Damron permission to build on his land. Defendants had no intention to convey ownership and title to Damron. (T.437)

On August 13, 1996, Mr. Damron had the quit claim deed fraudulently notarized. (T.250) As notarized, the quit claim deed reads:

The Seller, for and in consideration of the sum of $10.00 Dollars, and other valuable considerations . . . has remised, released and quitclaimed to the

("Damron Construction"), which provided that the Mickens' property would to be "temporarily subrogated" to Damron Construction and released back to the Mickens at the final closing.

On August 12, 1996, Allen Damron, owner and President of Damron Construction, obtained the Mickens' signature on a blank quit-claim deed to the property.

Without informing the Mickens and knowing that the Mickens already had available a conventional construction VA insured loan for the construction of the home, Damron Construction recorded this deed in the official record books of Polk County, Florida and entered into a montage with Chase Financial FSB using the Mickens' property as collateral for a construction loan.

As a result of the above referenced construction contract and quit-claim deed, a residential structure and pool exists on the Mickens' property.

Damron Construction now claims ownership of the property and sought to eject the Mickens from their property. In response, the Mickens have brought this action to cancel the August 12, 1996 deed, quiet title in the said property in them, find Damron Construction in breach of the construction contract, and eject Damron Construction who have occupied their property by placing a residential structure on the Mickens' property.

Based on these facts and the evidence presented at trial, the Court has made the following findings on the issues raised by the parties.

A. <u>THE AUGUST 12, 1996 DEED:</u>

Damron Construction through the person of Allen Damron, intentionally misrepresented the nature of the deed signed by the Mickens. By purposely creating the false impression that the deed would temporarily subrogate the

Mickens' property, Damron Construction intended to and in fact did gain the Mickens' reliance on these misrepresentations and obtained their signature on a blank

Buyer, Buyer's heirs and assigns forever, all rights, title, interest and claim of the Seller in and to the following described land in Polk County, Florida.

Damrons claims and continues to claim fee simple title to Defendants' land. This clearly contradicts the Defendants' intentions and Mr. Damron's representations. Defendants did not expect Damron to have the deed fraudulently notarized and recorded. Subsequently, Damron used the property as collateral to obtain its construction loan.

Once construction began, it was clear that the parties had distinctly different ideas as to what they had agreed on and how the contract was to be performed. The first dispute arose over the allowance for lot clearing. Defendants' original plans had allowed $600.00 for lot clearing. Plaintiff claimed he could clear the lot for $250.00, and the allowance was subsequently changed to $250.00. (T.379) When Damron was unable to clear the lot for $250.00; Damron sought the difference from Defendants. Damron did not

allow Defendants to pick out the tile, carpet or crown molding of their choice. Damron claims that Defendants did not understand what the allowances for theses items meant. However, Defendant have testified that they were willing to pay the overages in order to get the materials they wanted. It appears that Damron simply interpreted the allowances as absolute limitations on Defendants' choices.

The parties also disagreed on the driveway. Damron claims that Defendants only had a $1,800.00 allowance for the driveway. Defendants claim that the $1,800.00 allowance was actually for possible additions to the driveway and that a standard driveway was included in the contract price. (T. 377) Damron also billed Defendants for plant shelves and french doors. Mr. Damron had previously offered to include the plant shelves as an incentive for Defendants to sign the contract. (T.367) Furthermore, the french doors were part of the original contract. Defendants also claim that the window trim should have been put in the house. Mrs Damron

testified that the window trim was mistakenly left on the specifications sheet, but Mr. Damron testified that Defendants were entitled to the window trim. (T.64 and 294-295)

At the final inspection, the Defendants discovered that Damron had simply used the kitchen and bathroom fixtures in their model instead of the fixtures Defendants requested. Damron argues that Defendants were told that they would receive the fixtures that were in the model to save on construction costs. However, Defendants argue that they wanted the fixtures of their choice including brass fixtures in the sinks, tubs, and showers. (T. 403-405) Finally, significant defects have been found in the roof that Damron installed on the house.1 (T. 329-337)

As a result of these disagreements, Defendants refused to close on the house and this litigation ensued. In February 1997, Damron filed a three count complaint against Defendants. Count I sought $180,366.84 in contract

damages. Count II sought damages allegedly resulting from Defendants' delay in closing. Count III sought an order quieting title to the property in Damron and declaring that Damron held fee simple title to the property. Defendants responded with counterclaims for fraud, cancellation of deed, quiet title, ejectment and breach of contract. Defendants essentially argued that Damron had committed fraud in regards to the quit claim deed, made changes after the contract was signed, and failed to build the home they wanted on their lot. Defendants argue that the deed is void, that they should have fee simple title to the property, and that Damron has occupied their land placing a house on the land that was not built according to the contract that they agreed on. Though Defendants claim that the house is not the house they asked for, they have shown their desire to keep the house by occupying the house.

In January 1998, a bench trial was held. A final judgment was entered January 26,1998. Cross appeals were filed, and the Second District Court of Appeals reversed the final judgment.

This Cause is now before the Court on remand from the Second District Court of Appeals and cross motions for final judgment. Having heard argument from the parties and reviewed the evidence in the record, the Court finds that final judgment should be entered against Plaintiff on all three counts of its complaint. The Court further finds that Defendants essentially seek rescission pf the construction contract and an order quieting title to the property and house in Defendants.

Numerous cases set forth what a Defendant must show to obtain rescission of a contract. See Billian v. Mobil Corp, 710 So. 2d 984, 991 (Fla. 4th DCA 1998); Steak House, Inc., v. Barnett, 65 So. 2d 736 (Fla. 1953). Though

Defendants' could have been much clearer as to their desire for rescission and their attempts to rescind the contract, Defendants are before the Court pro se, and the Court finds that Defendants have made sufficient allegations in their counter claims and arguments before the Court to state a cause of action for rescission. Rescission is a harsh remedy and courts are generally reluctant to grant such a remedy. However, after reviewing the evidence, the Court finds that rescission is appropriate in this case on a number of grounds. First, Damron misrepresented its ability to build the house sought by Defendants for the price offered, misrepresented the features and amenities that it intended to put in the house, and misrepresented the choices that defendants would have as to materials. Billian v. Mobil Corp., 710 So.2d 984, 989-990 (Fla. 4th DCA 1998)(holding that material misrepresentation is ground for rescission.). Next, the parties entered the contract under incorrect assumptions as to how the house would be built, what features were included in the contract

price, and the degree of control Defendants would have in the process. Braman Dodge, Inc. V. Smith, 515 So. 2d 1053, 1054 (Fla. 3rd DCA 1987). Finally, Damron fraudulently maintained a claim to fee simple title to Defendants' property and used that claim to gain an unfair advantage as to what materials and features would be included in the house, Fishman v. Thompson, 181 So. 2d 604 (Fla. 3rd DCA 1965).

Damron misrepresented its ability to build the house Defendants wanted for less than they had already been offered and enticed Defendants by offering free added features. Damron then attempted to bill Defendants for these added features and misinterpreted allowances to prevent Defendants from choosing more costly materials for their house. Damron ignored Defendants' preferences in bathroom and kitchen fixtures and used the fixtures in its model in an apparent attempt to cut cost. Damron installed a faulty roof on Defendants' house. Finally, Damron fraudulently obtained a quit claim deed from Defendants and attempted to

use its improper claim to fee simple title as leverage to force Defendants to accept features in their house that they did not want. Under these circumstances, the Court finds that the May 4, 1996 contraction contract should be rescinded.

When a contract is rescinded, it is of no effect. Borck v. Holewinski, 459 So. 2d 405 (Fla. 4th DCA 1984). Since the contract has no effect, the Court must seek to return the parties to the position they occupied prior to the contract. In this case, the Court obviously cannot have the house removed from Defendants' property. However, the Court can return the parties to the same financial position they occupied prior to the contract. Turner v. Fitzsimmons, IV, 673 So. 2d 532, 535 (Fla. 1st DCA 1996) (noting that where restoration of the status quo is impossible a court may still grant rescission if the equities between the parties can be balanced.). Even though the Mickens did not receive the house they wanted, their land has been improved through the construction of a home on it. Defendants must therefore pay

for the reasonable costs of the materials and labor provided by Damron.

Since the reasonable cost of materials and labor involved in the construction of Defendants' house are unlikely to be the same as its appraised value, the Court must hear evidence as to such value. To this end, the parties are hereby directed to each choose one independent contractor to evaluate the reasonable value of the materials and labor involved and present these evaluations to the Court in an evidentiary hearing to be scheduled within 90 days of this order. Each party shall have 30 days in which to choose an independent contractor. At the above mentioned evidentiary hearing, the Court will consider evaluations by the independent contractors and any material defects in the house.

It is therefore, ORDERED and ADJUDGED that final judgment is hereby entered against Plaintiff on its complaint.

It is further ORDERED and ADJUDGED that the May 4, 1996 construction contract is hereby RESCINDED and of no effect.

Defendants are hereby ordered to pay Damron for the reasonable costs of the materials and labor it supplied in the construction of the house.

In return, Damron must execute a deed conveying any interest it claims in the property to Defendants.

ORDERED in chambers this 12 day of July, 1999 at Bartow, Florida.

Cecelia M. Moore
Circuit Court Judge

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APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 05-15518-HH

RONNIE MICKENS,
GLORIA J MICKENS,

Plaintiffs-Appellants,

Versus

STEWART TITLE GUARANTY COMPANY,
ALLEN DAMRON CONSTRUCTION COMPANY,
ELAINE P. CANADY, et al . ,

Defendants-Appellees.

On Appeal from the United States District Court for the Middle District of Florida

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Before: DUBINA, HULL and FAY, Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35,

Federal Rules of Appellate Procedure), the Petition (s) for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

[JUL 11 2006]

THOMAS K. KAHN
CLERK

APPENDIX D

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF

APPEALS FOR THE ELEVENTH CIRCUIT

No. 05-15518
Non-Argument Calendar

D. C. Docket No. 05-01115-CV-T-26-EAJ

RONNIE MICKENS,
GLORIA J MICKENS,

Plaintiffs-Appellants,

versus

TENTH JUDICIAL CIRCUIT,
DISTRICT COURT OF APPEALS, SECOND DISTRICT,

Defendants,

STEWART TITLE GUARANTY COMPANY,
ALLEN DAMRON CONSTRUCTION COMPANY,
ELAINE P. CANADY, et al.,

Defendants-Appellees.

Appeal from the United States District Court
For the Middle District of Florida

(May 22, 2006)

Before DUBINA, HULL and FAY, Circuit Judges.

PER CURIAM:

Ronnie and Gloria Mickens appeal pro se the district court's denial of their motion for a preliminary injunction and dismissal with prejudice of their pro se second amended civil complaint, in which they asserted various statutory and constitutional claims against Stewart Title Guaranty Company ("Stewart Title Guaranty"), Stewart Title of Polk County, Fla. ("Stewart Title"), Allen Damron Construction Company ("Damron Construction"), Allen Damron, Debra Damron, Elaine P. Canady, and Edith R. Rewis.

The Mickens also named as "third party defendants" in this second amended complaint the Polk County State Attorney, the Polk County Sheriff, and the Polk County

Property Appraiser ("the Polk County Defendants"). The Mickens argue on appeal that the district court erred in concluding that dismissal was warranted as to their claims against the non-governmental defendants because the court lacked subject jurisdiction under the Rooker-Feldman doctrine. The Mickens also contend that the court abused its discretion in dismissing their claims against the Polk County Defendants, instead of granting the Mickens's motion to amend their second amended complaint. For the reasons set forth more fully below, we affirm.

On June 15, 2005, the Mickens filed pro se a 41-page civil complaint against the Tenth Judicial Circuit in and for Polk County, the Second District Court of Appeals, Stewart Title Guaranty, and Damron Construction Company, asserting multiple federal statutory and constitutional claims and state-law claims. After determining that this complaint was a "quintessential shotgun pleading," the district court sua sponte struck it and directed the Mickens to replead their

claims in compliance with the pleading requirements in Fed. R.Civ.P. 8(3) and 10(b).

On June 28, 2005, the Mickens filed an amended complaint, adding new defendants Stewart Title, Canady, Rewis and the Damrons, in their individual capacities. The Mickens also added new state-law claims for slander of title, cancellation of deed, action to quiet title, ejectment, and breach of contract. Moreover, the Mickens filed an "Emergency Motion for Injunction to Enjoin Foreclosure Sale," seeking an order enjoining the Tenth Judicial Circuit from conducting a mortgage foreclosure sale of their real property. The district court in an endorsed order denied this injunctive motion.

Stewart Title Guaranty subsequently filed a motion to dismiss the Mickens's amended complaint, asserting that the district court lacked jurisdiction based on the Rooker-Feldman doctrine. Stewart Title Guaranty argued that the Mickens's claims had been the subject of three separate state

lawsuits in Florida and ten appeals in Florida's appellate courts. The district court denied Stewart Title Guaranty's motion to dismiss without prejudice. Nevertheless, the court noted that the Mickens's amended complaint was still an impermissible "shotgun complaint" and ordered them to again replead their claims in compliance with Rules 8(a) and 10(b). The court also instructed that "this is the last opportunity [the Mickens] will be afforded to amend their complaint." Additionally, the court granted the Mickens's assertion that they were consulting an attorney to assist them in repleading their complaint.

On August 11, 2005, the Mickens filed the instant second amended complaint, reasserting their previous claims and, for the first time, naming the Polk County Defendants as "third party defendants." The Polk County Defendants specially were named in the Mickens's claim alleging conspiracy to violate civil rights, filed pursuant to 42 U.S.C.

Sec 1985(c) ("Count 1"; their claim alleging violations of their substantive and procedural due process rights and their equal protection rights, filed pursuant to U.S.C.Sec 1983 & 1985 and 18 U.S.C. Sec 241 & 242 ("Counts III, IV & V"); and their discrimination clam based on race, filed pursuant to 42 U.S.C. Sec 2000e et seq. (Count VIII").

Stewart Title Guaranty filed a motion to dismiss with prejudice this second amended complaint, again arguing that the court lacked jurisdiction under the Rooker-Feldman doctrine.

In support, Stewart Title Guaranty attached a copy of a state trial-court decision, in consolidate Case Nos. 1998CA-002977 (Stewart Title Guaranty's foreclosure suit), 1997CA-00045 (the Mickens's suit against Damron Construction), and 1998CA-01152 (the Mickens's suit against Stewart Title, Canady, and Rewis), which included the following facts. In February 1996, the Mickens purchased a sub-division lot for

$25, 000, with the intent of hiring Damron Construction to build a home for them on the property. The Mickens next secured a loan through the Veterans Administration ("VA"), with a commitment through Nationsbank, to finance both the construction of the home and the purchase of the lot, which already had been paid in full. The Mickens also sought cash in equity to buy furniture for their intended home. However, after the VA informed the Mickens that it would not guarantee construction loan, a loan officer from Nationsbank advised the Mickens that (1) Damron Construction would have to secure a construction loan while the house was being built, (2) the Mickens would have to deed the lot to Damron Construction as security on the construction loan, and (3) after the house was constructed, Damron Construction would transfer the house and lot back to the Mickens, who would then use the VA loan through Nationsbank to pay Damron Construction.

In accordance with the loan officer's advice, the Mickens and Damron Construction executed a construction contract specifying that the lot would be subordinated temporarily to Damron Construction, then released back to the Mickens at final closing. Damron Construction, in turn, secured a $156, 000 loan through Chase Federal Bank to construct the house. Stewart Title-the closing agent for the construction loan-procured the title insurance, underwritten by Stewart Title Guaranty, and prepared the quitclaim deed that was used to transfer title for the lot from the Mickens to Damron Construction. On closing day for this construction loan Damron Construction picked up the partially completed quitclaim deed from Stewart Title and, on the Mickens's request, brought it to the Mickens's home for the Mickens to sign outside the presence of witnesses or a notary. Damron then took the signed deed, along with photocopies of the Mickens's driver's licenses, to the closing. Rewis and

Canady, both employees of Stewart Title, witnessed the closing and served as a notary, respectively, relying soley on the photocopies of the Mickens's licenses.

After the relationship between the Mickens and Damron Construction deteriorated, due to disputes over the quality and cost of the construction project, the Mickens consulted an attorney, who advised them that the quitclaim deed to Damron Construction had been recorded. To protect their rights to this lot, the Mickens signed and recorded an "Affidavit of Equitable Owners," which stated:

> The intent of the parties to the [construction] contract was that affiants would convey the above described property to contractor who would obtain construction financing, build a home on the property and reconvey the property to affiants.

Damron Construction subsequently sued the Mickens in the Florida Tenth Judicial Circuit, in Case No. 1997CA-000455, seeking specific performance of the contract and the ejectment of the Mickens from their house. In January 1998,

at the conclusion of the bench trial, the state trial court found that the deed from the Mickens to Damron Construction was void ab initio and entered a judgment in favor of the Mickens. This judgment, however, was reversed on appeal by the Second District Court of Appeals, in Allen Damron Constr. Co v. Mickens, 725 So.2d 1174 (Fla. Dist. Ct. App. 1998).

On remand, the state trial court ordered the parties to obtain experts to determine the value of the labor and materials used to improve the property. The Mickens appealed that judgment, which appeal resulted in an affirmance. In October 2003, the state trial court entered a final judgment in favor or Damron Construction and against the Mickens, jointly and severally, in the amount of $234, 854.64. Moreover, on December 3, 2004, the Second District Court of Appeal affirmed this final judgment, in Mickens v. Allen Damron Constr. Co., 890 So.2d 1139 (Fla. Dist. Ct.

App. 2004), explaining that these damages resulted from the Mickens's refusal to permit a court-ordered inspection of the residence and their threats of bodily harm. On July 20, 2005, the Florida Supreme Court denied the Mickens's petition for review without opinion.

This consolidated trial-court order also discussed that, while this litigation between Damron Construction and the Mickens was pending, Nationsbank, now the owner of the mortgage due to its merger with Chase, filed a notice of claim under the title insurance policy underwritten by Stewart Title Guaranty. Stewart Title Guaranty then exercised its right to purchase the loan to resolve the claim and successfully litigated a foreclosure suit, base on Damron Construction's default on the loan while the Mickens still possessed the property, in Case No. 1998CA-002977. The Mickens, in turn, unsuccessfully sued Stewart Title, Canady, and Rewis, challenging their absence at the initial loan closing, in Case

No. 1998CA-1152. In March 2005, the Second District Court of Appeals affirmed these consolidated orders. Moreover, on June 1, 2005, the Supreme Court of Florida dismissed the Mickens's petition for review of this affirmance.

In entering judgment in favor of Stewart Title Guaranty as to all of their claims in this consolidated order, the state trial court identified the following findings of fact that relate to all of the actions: (1) the Mickens wanted Damron Construction to construct a house on their lot; (2) Damron Construction built a house on this lot; (3) the Mickens had secured a mortgage for this house, but had not paid for it; (4) the Mickens had signed the quitclaim deed with the intent of having the house constructed and had delivered the deed to Damron Construction (5) the Mickens benefitted from Damron Construction receiving the construction loan; (6) after the construction was completed,

the Mickens had refused to close on the final VA mortgage, and Damron Construction filed suit for specific performance; and (7) the Mickens lived in the house without paying rent or mortgage on it for approximately six years.

Applying these factual findings, the state court also examined the relative equities among the parties and concluded that, although Stewart Title "should have been more prudent in the deed process [,] but their poor judgment should not prevent them from getting an equitable lien on the house." The court explained that, the extent the Mickens were relying on the defendants' non-compliance with all statutory requirements: (1) these "shortcuts" were taken in an attempt to accommodate the Mickens; (2) the Mickens's conduct throughout the course of the litigation had been more egregious; and (3) the Mickens's clear intent to have a house built on their property was fulfilled. The court also concluded that the Mickens had failed to prove their claims

because, although they may have suffered damages as a result of a contractual dispute with Damron Construction, the defective quitclaim deed had not caused these damages.

In addition to Stewart Title Guaranty's motion to dismiss in the instant case, the Polk County Sheriff filed a motion to dismiss, arguing: (1) the Mickens had failed to state a cause of action against him for civil conspiracy, extrinsic fraud on the court, or violations of substantive and procedural due process and equal protection rights, as the second amended complaint was based on contracts to which the Sheriff was not a party; and (2) the claim of civil conspiracy was due to be dismissed because the Mickens had failed to support it with any descriptions of overt acts. The Polk County Property Appraiser also filed a motion to dismiss, arguing that (1) she had been identified improperly as a "third party beneficiary," (2) the Mickens had failed to state claim against her.

The district court dismissed the Mickens's complaint as to all of the Polk County Defendants, explaining that, although it was liberally construing the Mickens's pro se complaint, the Mickens still were bound by the Federal Rules of Civil Procedure, including Rule 14(a), and thus, could not sue the defendants as "third party defendants." After the Mickens filed a motion for leave to file a third amended complaint, the court also denied this motion without prejudice and ordered the Mickens, instead, to respond to the remaining motions to dismiss.

The Mickens then filed a response, arguing that the Rooker-Feldman doctrine was inapplicable to their second amended complaint because the prior state judgments on which the non-governmental defendants were relying were obtained through "extrinsic fraud." Citing to the Ninth Circuit's decision in Kougasian v. TMLS, Inc., 359 F.3d 1136, 1140-41 (9th Cir. 2004), the Mickens contended that

the Rooker-Feldman doctrine is not applicable when, such as here, the injury asserted is illegal acts or omissions by adverse parties. The Mickens also explained that this "extrinsic fraud" primarily consisted of the defendants "conspiring to maliciously prosecute two frivolous foreclosure lawsuits without legal or equitable standing, without indispensable parties[,] and by obstructing [the Mickens] of rights or defenses of res judicata, issue preclusion, stare decisis and the law of the case."

Additionally, the Mickens filed a second injunctive motion, seeking to enjoin the Polk County Sheriff from evicting them from the property in question and from giving possession to Stewart Title Guaranty, pursuant to a writ of possession. Similar to their response to the motion to dismiss, the Mickens asserted that this injunctive relief was merited because the defendants had committed "extrinsic fraud" on the state courts. The Mickens also contended that

they would be "irreparably harmed" if they and their possessions were removed, and that they had no adequate remedy at law.

The district court again denied the Mickens's motion for injunctive relief, explaining that they had failed to show a "substantial likelihood of success on the merits" because, despite the allegation that "extrinsic fraud" had resulted in the entry of multiple state-court judgments, they not established that the Rooker-Feldman doctrine was inapplicable. The court also determined that the Mickens had failed to show that irreparable harm had been, or would be, committed by the Sheriff by removing the Mickens and their possessions from the property because the Mickens had been forewarned by the Sheriff's intended acts, and they could attempt to seek relief if any injuries occurred in the process of the eviction.

The district court also granted the remaining defendants' motions to dismiss. After summarizing the contents of the three prior state lawsuits and the second amended complaint in the instant action, the court explained that it lacked jurisdiction under the Rooker-Feldman doctrine because: (1) the federal claims were "inextricably interwined with" the state-court judgments and would succeed only to the extent that the state court wrongly had decided the issues, and (2) at least two of the three state-court actions, which had been consolidated but had traveled in separate files, had resulted in judgments rendered against the Mickens prior to the Mickens's filing of the instant action.

The district court specifically discussed that (1) the Second District of Appeals reversed the initial judgment in favor of the Mickens because it was unsupported by the record, (2) two of the state courts had found that neither Damron Construction nor the Damron's individually had

committed fraud, (3) another state court had found that there was no evidence that either Stewart Title or Damron Construction had acted fraudulently, and (4) all of the Mickens's claims involving discrimination, Sec 19983, and violations of Florida statutes could have been raised in Florida courts. The court also acknowledged that the appeal of one of the prior state actions, that is, a money judgment against the Mickens for not complying with a court-ordered inspection of the property at issue in Case No. 1997-CA-455. Nevertheless, the court concluded that the final mortgage-foreclosure judgment in Case No. 1998-CA-2977, had involved "inextricably intertwined" claims, such that the same facts and issues relevant to the instant act had been resolved before this action was filed. The Mickens challenge on appeal the district court's (1) dismissal of their second amended complaint, and (2) denial of their motion for injunctive relief.

Issue 1: **Whether the district court erred in dismissing the Mickens's second amended complaint with prejudice against the non-governmental defendants**

Again citing to the Ninth Circuit's decision in Kougasian, the Mickens argue on appeal that the district court erred when it determined that it lacked subject matter jurisdiction based on the Rooker-Feldman doctrine because the Mickens had alleged that the prior state-court judgments had resulted from the defendants' "extrinsic fraud." The Mickens further contend that the Rooker-Feldman doctrine was inapplicable because one of the prior state actions was still pending when the Mickens filed the instant federal action. The Mickens assert that they presented the instant action independent claims for relief, as well as asserting claims against "third party defendants," whose joinder previously was prevented by the original defendants' fraud. Finally, the Mickens generally argue that their new claims were not "inextricably intertwined" with the prior decisions

because, in advancing their federal claims, the Mickens did not assert any legal errors by the state courts.

We review de novo a district court's order of dismissal, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Mesa Valderrama v. United States, 417 F.3d 1189, 1199 (11th Cir. 2005). We also review de novo rulings on a federal court's subject matter jurisdiction. Goodman, 259 F.3d at 1331. a federal court is obligated to dismiss a case if the court, after considering both the pleading and evidence outside of the pleadings, determines that it lacks subject matter jurisdiction. Id. at 1331 n.6.

In addition to discussing that federal courts, other than the Supreme Court, have no authority to review the final judgment of state courts,**we explained in Goodman as follows:

> The [Rooker-Feldman] doctrine extends not only to constitutional claims presented or adjudicated by a state court, but also to claims that are "inextricably intertwined" with a state court judgment. A federal claim is "inextricably intertwined" with a state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. However, even if a claim is "inextricably intertwined" with the state court judgment, the doctrine does not apply if the plaintiff had no reasonable opportunity to raise his federal claim in state proceedings.

Id. at 1332 (citation and quotation omitted). Thus, for the Rooker-Feldman doctrine to bar a district court's jurisdiction, the following four criteria must be met:

> (1) the party in federal court is the same as the party in state court; (2) the prior state ruling was a final or conclusive judgment on the merits; (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state court proceedings; and (4) the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment.

Amos v. Glynn County Bd. Of Tax Assessors, 347 F.3d 1249, 1265 n.11 (11th Cir. 2003) (internal citations omitted).

Here, neither party is contesting that the Mickens and the non-governmental defendants are the same parties as in

the state-court proceedings. Instead, the Mickens are contending that the state-court judgments were not "rendered before the district court proceedings commenced," and, thus, concurrent state and federal jurisdiction existed. Indeed, the Supreme Court has discussed that where there is "parallel state and federal jurisdiction, Rooker-Feldman, is not triggered simply the entry of judgment in state court." Exxon Mobil Corp. v. Saudi Indus. Corp., 544 U.S. 280,____ , 125 S. Ct. 1517, 1526, 161 L.Ed.2d 454 (2005). Thus, the Supreme Court held in Exxon that the Rooker-Feldman doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Id. at__, 125 S.Ct. at 1521-22.

The record, however, does not support the Mickens's argument that the state-court judgments were not "rendered before the district court proceedings commenced." The state court consolidated the three state actions in question and entered judgments in them prior to the Mickens filing their original complaint in the instant action on June 5, 2005. Moreover, the Florida Supreme Court dismissed the Mickens's petitions for review of the Second District Court of Appeals' affirmances of these judgments in at least two of the three state cases, including Stewart Title Guaranty's foreclosure action. Although the Florida Supreme Court's denial on July 20, 2005, of the Mickens's petition for review of the Second District Court of Appeals' affirmance in their suit against Damron Construction, in Case No. 1997CA-000455, occurred after the instant federal action was commenced, the federal action was subsequent to the Mickens's filing their original complaint in the state action,

and neither party has contested that these state actions were consolidated. Moreover, a judgment for the Mickens in the instant action would have required a finding that the state court determination was wrong and, thus, involved claims that were "inextricably intertwined."

To the extent the Mickens also are arguing that the Rooker-Feldman doctrine was inapplicable because they were alleging that the defendants committed "extrinsic fraud" on the state court, instead of asserting claims that were "inextricably intertwined" with the claims they raised, or could have raised, in state court, they failed to identify acts constituting "extrinsic fraud." In kougasian, the non-binding Ninth Circuit decision on which the Mickens rely, the plaintiff sought to set aside a state-court judgment by alleging that the defendant submitted a false affidavit to the state court and did not supply to the plaintiff contact information for the declarant, thereby preventing the plaintiff from deposing or

otherwise challenging the allegedly false affidavit. See Kougasian, 359 F.3d at 1140. Based on these acts by the defendants, the Ninth Circuit reversed the district court's dismissal under the Rooker-Feldman doctrine, and remanded the case for the district court to determine what, if any, preclusive effect the state-court judgments had on the plaintiff's federal suit. See id. at 1141-44.

On the other hand, in the instant case, the only "fraudulent acts" the Mickens attributed to the defendants were their filing of state actions. However, as discussed above, instead of being "fraudulent," or even frivolous, these actions resulted in judgments in favor of the defendants. Moreover, all of the claims that the Mickens identified in the second amended complaint either flowed directly from the three prior state lawsuits, or should have been raised in that forum. See Goodman, 259 F.3d at 1332. The Mickens's claims also were "inextricably intertwined" with the state

court's judgments because the Mickens, by raising constitutional and tort challenges relating to their eviction from the property, in essence, were attempting to reverse the state court's orders relating to ownership of the property in question. See id.; see also Powell v. Powell, 80 F. 3d 464, 467 (11th Cir. 1996) (holding that the Rooker-Feldman doctrine barred an "as applied" challenge to a state court decision to distribute a portion of the plaintiff's husband's naval retirement pay to her upon their divorce). Thus, the district court properly concluded that the instant action, at least by the non-governmental defendants who were parties to the prior state lawsuits, was barred by the Rooker-Feldman doctrine.

Issue2: **Whether the district court erred in denying the Mickens's motion for a preliminary injunction**

For the same reasons discussed in Issue I, the Mickens argue that the district court erred when it denied

their motion for a preliminary injunction based on its determination that they had failed to show a "substantial likelihood of success on the merits." The Mickens also contend that the court erred in concluding that they failed to show that they had suffered irreparable injuries because their "homestead real property have been stolen with the aid of law enforcement officers," and they have been deprived of free speech, false imprisoned, retaliated against, and denied due process and equal protections of the law.

"A district court may issue a preliminary injunction when the moving party demonstrates (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered unless the injunction is issued; (3) the threatened injury to the moving party outweighs whatever damage the proposed injunction might cause the non-moving party; and (4) if issued, the injunction would not be adverse to the public interest." BellSouth Telecommunications, Inc.

v. MCIMetro Access Transmission Services, LLC, 425 F.3d 964, 968 (11th Cir. 2005). A preliminary injunction, however, "is an extraordinary and drastic remedy not to be granted unless the movant clearly established the "burden of persuasion" as to each of the four prerequisites." Four Seasons Hotels and Resorts, B.V. v. Consorcio Barr, S.A., 320 F.3d 1205, 1210 (11th Cir. 2003). (quotation omitted). Moreover, we review a district court's order granting or denying a preliminary injunction only for abuse of discretion. Id. at 1209.

In the instant appeal, however, we need not determine whether the district court abused its discretion in denying the Mickens's motion for a preliminary injunction because, as discussed above, the district court lacked subject matter jurisdiction under the Rooker-Feldman doctrine. See Doe v. Federal Aviation Administration, 432 F.3d 1259, 1264 (11th Cir. 2005) (concluding that we need not address the claim

that the district court erred by misapplying the legal standards for the issuance of a preliminary injunction because the district court lacked subject matter jurisdiction). Indeed, we have explained that the Rooker-Feldman doctrine can bar injunctive relief as well as other forms of relief. Blue Cross and Blue Shield of Maryland, Inc. v. Weiner, 868 F.2d 1550, 1556 (11th Cir. 1989). Thus, in Blue Cross, we affirmed the district court's denial of a preliminary injunction when the requested relief would have required the district court to decide a federal issue that was "inextricably intertwined" with a Florida trial court's judgment. See id. Because the district court similarly lacked subject matter jurisdiction over the claims in the Mickens's second complaint, we concluded that the district court also lacked jurisdiction to grant injunctive relief.

Issue3: **Whether the district court abused its discretion in dismissing the Mickens's claims against the Polk County Defendants**

The Mickens argue that the district court abused its discretion when it granted the Polk County Defendants' motion to dismiss based on the Mickens's mis-identification of these defendants as "third party defendants," instead of affording the Mickens another opportunity to amend their complaint to correct this "technical error." The Mickens also contend that, given this opportunity, they could have raised viable claims against government officials for unlawful actions under "Color of Law" and in violation of the Due Process and Equal Protection Clause of the Fourteenth Amendment.

As discussed above, we review de novo a district court's order of dismissal. See Mesa Valderrama, 417 F.3d at 1194. Under Fed.R.Civ.P. 14, a "third party defendant" may be brought into a lawsuit by a defending party acting as a "third party plaintiff." Fed.R.Civ.P. 14(a). To the extent the Mickens were proceeding without counsel, "[p]ro se

pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." See Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998). However, a defendant's pro se status in civil litigation generally will not excuse mistakes he makes regarding procedural rules. See McNeil v. United States, 508 U.S. 106, 113, 113 S.Ct. 1980, 1984, 124 L.Ed.2d 21 (1993) (explaining that we "never [had] suggested that procedural rules in ordinary civil litigation shall be interpreted so as to excuse mistakes by those who proceed without counsel"). Because the Mickens procedurally could not seek damages against the Polk County Defendants as "third party defendants," the district court did not err dismissing their claims against these defendants.

Furthermore, to the extent the Mickens are contending that the district court abused its discretion in not allowing them to again amend their second amended complaint to

correct this error before entering its dismissal order, we review the district court's decision to deny the Mickens's motion to amend for an abuse of discretion. See Hall v. United Ins. Co. of America, 367 F.3d 1255, 1262 (11th Cir. 2004). "Ordinarily, if the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, leave to amend should be freely given." Id. (quotations and marks omitted). A district court, however, may properly deny leave to amend a complaint under Rule 15(a) when such amendment would be futile. Id. at 1262-63.

A district court's "denial of leave to amend is justified by futility when the complaint as amended is still subject to dismissal." Id. at 1263. A complaint is subject to dismissal under Fed.R.Civ.P. 12(b)(6) when, among other things, the plaintiff "can prove no set of facts in support of his claim which would entitle him to relief." Marsh v. Butler County,

Ala., 268 F.3d 1014, 1022 (11th Cir. 2001) (en banc) (citation and quotation omitted).

Moreover, a district court "need not ... allow an amendment ...where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed . . .." Bryant v. Dupree, 252 F.3d 1161, 1163 (11th Cir. 2001).

Here, in granting the Mickens leave to file their second amended complaint, the court instructed that "this is the last opportunity [the Mickens] will be afforded to amend their complaint." Additionally, the court granted the Mickens an extension of time to file a second amended complaint, based on the Mickens's assertion that they were consulting an attorney to assist them in repleading their complaint. However, despite this notice, the Mickens, in filing their second amended complaint, again filed a "shotgun pleading," whereby they failed to state a cause of action. See

Freidlander v. Nims, 755 F.2d 810, 811-12 (11th Cir. 1985) (concluding that dismissal with prejudice was appropriate where the district court gave "specific and repeated warnings" that amendment was necessary).

Examining the Mickens's specific claims in their second amended complaint Sec 1985 "provides a vehicle to redress conspiracies to interfere with civil rights." Farese v. Scherer, 342 F.3d 1223, 1230 (11th Cir. 2003). The elements of a cause of action under Sec 1985(3)___the subsection at issue in this case__are "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protections of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." Denny v. City of Albany, 247 F.3d 1172, 1190 (11th Cir. 2001). (quotation omitted).

The core of a conspiracy claim is an agreement between the parties; thus, where the plaintiff fails to allege an agreement, the pleading is deficient and subjected to dismissal. Bailey v. Board of County Com'rs of Alachua County, Fla., 956 F.2d 1112, 1122 (11th Cir. 1992). Furthermore, where a plaintiff merely alleges "conclusory, vague, and general allegations of conspiracy," dismissal of the conspiracy claim may be proper. Kearson v. Southern Bell Telephone & Telephone Co., 763 F.2d 405, 407 (11th Cir. 1985). Because the Mickens merely alleged in their second amended complaint that the defendants generally covered and concealed other defendants' "crimes and torts," they failed to allege with specificity an agreement between the defendants to deprive the Mickens of their rights, and their Sec 1985(3) claim was due to be dismissed, see Bailey, 956 F.2d at 1122; Kearson, 763 F. 2d at 407.

The Mickens's claim that they suffered damages "as a consequence of all Defendants and Third-Party Defendants'

extrinsic fraud on the court," also failed as a matter of law. Under Florida Law, the Mickens had to plead each essential element of fraud with particularity, including alleging that (1) the defendant made a false statement regarding a material fact, (2) the defendant knew the statement was false when he made the statement, (3) the defendant intended for the plaintiff to rely on and act upon the false statement, and (4) the plaintiff justifiably relied upon the false statement to his detriment. See Simon v. Celebration Co., 883 So.2d 826, 832 (Fla. Dist. Ct. App. 2004). Federal pleading statements, although generally liberal, also require litigants to allege fraud "with particularity." See Corsello v. Lincare Inc., 428 F.3d 1008, 1012 (Cir. 2005) (discussing Fed.R.Civ.P. 9(b), petition for cert. filed, (April 6, 2006) (No. 05-1288). Here, the Mickens failed to allege what "extrinsic fraud" the Polk County Defendants committed, much less discussing the circumstances "with particularity."

Similarly, the Mickens failed to state a claim alleging a violation of their substantive or procedural due process rights. The Due Process Clause of the Fourteenth Amendment provides that no state "shall ... deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, Sec 1. "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Arrington v. Helms, 438 F.3d 1336, 1347 (11th Cir. 2006) (quotation omitted). Thus, a claim alleging the denial of procedural due process, under 42 U.S.C. Sec 1983, requires proof of three elements: "(1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." Id. (quotation omitted).

Here, assuming the Mickens properly alleged "state action" and the deprivation of a constitutionally-protected liberty or property interest" by contending that the "third

party defendants" conspired with each other to "fraudulently convey [the Mickens's] real property," see Grayden v. Rhodes, 325 F.3d 1225, 1332 (11th Cir. 2003) (concluding that the plaintiffs enjoyed a constitutionally-protected property interest in continued residency at their apartments and were deprived of that interest upon eviction), they failed to allege either a "constitutionally-inadequate process," or that the Polk County Defendants failed to provide adequate procedures. Indeed, we have explained that the state must have the opportunity to "remedy the procedural failings of its subdivisions and agencies in the appropriate for a-agencies, review boards, and state courts," before being subject to a claim alleging a procedural due process violation. See Horton v. Board of County Com'rs of Flagler County, 202 F.3d 1297, 1300 (11th Cir. 2000). Thus, the Mickens failed to allege sufficiently a claim of a violation of procedural due process.

Additionally, "[t]he substantive component of the Due Process Clause protects [only] those rights that are "fundamental," that is, rights that are "implicit in the concept of ordered liberty." Behrens v. Regier, 422 F.3d 1255, 1264 (11th Cir. 2005) (quoting McKinney v. Pate, 20 F.3d 1550, 1556 (11th Cir. 1994) (en banc). We further have explained that "[f]undamental rights are those rights created by the Constitution." Greenbriar Village, L.L.C. v. Mountain Brook, City, 345 F.3d 1258, 1262 (11th Cir. 2003). Additionally, in cases involving non-custodial relationships, such as here, a government actor's conduct that would amount to an intentional tort under state law only qualifies as a substantive due process violation if it is arbitrary or "shocks the conscience." See Tinker v. Beasly, 429 F.3d 1324, 1328-29 (11th Cir. 2005)(concluding that police officers' falsely informing a suspect about the status of her legal representation before questioning her about a murder did not "shock the conscience" so as to violate the suspect's

substantive due process rights). The Mickens merely alleged in their second amended complaint that the Polk County Defendants "covered and concealed the crimes and torts" of the other defendants and "fail[ed] to protect, consider, follow, enforce, or apply the laws." Because the Mickens failed to allege the deprivation of a fundamental right, much less conduct that was arbitrary or "shock the conscience." Their substantive due process claim also failed on its face. See Behrens, 422 F.3d at 1264; see also Tinker, 429 F.3d at 1328-29.

To the extent the Mickens were attempting to allege a violation of their equal protection rights, Sec 1 of the Fourteenth Amendment further provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, Sec 1. To state a Sec 1983 equal-protection claim, the Mickens had to (1) allege that, "through state action, similarly situated

persons have been treated disparately," and (2) "put forth evidence that [the defendants'] actions were motivated" by an unlawful factor. See Draper v. Reynolds, 369 F.3d 1270, 1278 n. 14 (11th Cir.) (quotations omitted), cert. denied, 543 U.S. 988 (2004). Here, the Mickens only asserted that the "third party defendants" "violated [the Mickens's] right[s] to equal protection by violating their right to due process, redress, free speech, life, liberty, and property." Because they failed to allege that any of the "third party defendants" either treated the Mickens differently from a similarly situated person, or were motivated by a specific discriminatory intent, the Mickens failed to allege sufficiently a violation of their equal protection rights.

Finally, to the extent the Mickens attempted to generally allege Title VII discrimination by stating that the "third party defendants" conspired with each other and the other defendants to 'systematically deprive [the Mickens] of

Due Process, Equal Protection ... Redress for conspiracy, forgery ... based on race," they failed to identify which part of Title VII on which they were relying. Moreover, they failed to explain what facts supported such a claim. Thus, this claim also was due to be dismissed. See Jackson v. BellSouth Telecommunications, 372 F.3d 1250, 1271 (11th Cir. 2004) (explaining that "[p]leadings must be something more than an ingenious academic exercise in the conceivable," and "unsupported conclusions of law or of mixed law and fact are not sufficient to withstand a dismissal under [Rule 12(b)]") (quotations omitted).

Accordingly, we conclude that the district court lacked jurisdiction to grant the Mickens either damages or injunctive relief and, thus did not err in dismissing their complaint with prejudice based on the Rooker-Feldman doctrine, or in denying their motion for a preliminary injunction. Furthermore, because the Mickens could not sue

the Polk County Defendants as "third party defendants," and because they, otherwise, failed to state a cause of action against these defendants, the district court did not commit reversible error in dismissing the Mickens's claims against these defendants, instead of granting the Mickens's motion for leave to amend their second amended complaint. We, therefore, affirm.

AFFIRMED.

APPENDIX E

UNITED STATES DISTRICT COURT MIDDLE
DISTRICT OF FLORIDA
TAMPA DIVISION

RONNIE MICKENS and
GLORIA J. MICKENS,

Plaintiffs,

v. CASE NO: 8:05-CV-1115-T-26EAJ

STEWART TITLE GUARANTY COMPANY,
et al.,

Defendants.

ORDER

Before the Court are Defendant Stewart Title Guaranty Company's motion to Dismiss Second Amended Complaint with Prejudice (Dkt. 31), Defendants Allen Damron Construction Company (Damron Construction), Allen Damron and Debra Damron's Motion to Dismiss Second Amended Complaint (Dkt. 38), Plaintiffs' Opposition and Objections (Dkt. 40), Defendants Stewart Title of Polk Conunty, Florida, Elaine P. Canady, and Edith F. Rewis'

Motion to Dismiss Second Amended Complaint with Prejudice (Dkt. 41), and various state court orders provided by the parties. After careful consideration of the allegations of the Second Amended Complaint (Dkt. 28), the available orders of the state court, and the applicable law, the Court concludes that it does not have subject matter jurisdiction in view of the Rooker-Feldman doctrine.

Issues

Relying on orders written by Florida state court trial and appellate judges, this Court must study the development of this matter as it began as one lawsuit filed in a Florida circuit court, expanded into three lawsuits pending in Florida state court, encountered numerous appeals to the state appellate court for the Second District of Florida as well as the Florida Supreme Court, and has now reached this federal district court. As a preliminary observation, it appears that at least three Florida state court cases involving the same parties and issues, which are present and raised in this case, were

filed prior to the filing of this action. At least two of these cases have resulted in final judgments being entered against Plaintiffs. Nevertheless, the following pertinent procedural and substantive history of this matter in the state court is set forth with a view toward whether the Rooker-Feldman doctrine prohibits this federal court from exercising subject matter jurisdiction in this case. Specifically, this Court must determine whether Plaintiffs' contentions that (1) the state court judgments were "obtained by extrinsic fraud" by Stewart Title and the Damrons and (2) the state court process was not final before they filed this action, overcome the application of the Rooker-Feldman doctrine which would require dismissal of this case for lack of subject matter jurisdiction.

Background

The Plaintiffs became involved in an ongoing dispute among various parties over the construction of their home on real property located in Polk County, Florida. The Plaintiffs

originally purchased the lot for $25,000.00 in February 1996. (Dkt. 31, Exh.B at 4). In May 1996, the Plaintiffs entered into a construction contract with Damron Construction. Because the Plaintiffs wanted to finance their future home with a VA mortgage, the Plaintiffs quitclaimed the title to the property to Damron Construction to be "release[ed] back at final closing" to the Plaintiffs. (Dkt. 31, Exh. B at 5). In short, the closing agent with Stewart Title of Polk County, Inc. (Stewart Title-Polk), who was Elaine Canady, notarized and witnessed the quitclaim deed outside the presence of the Plaintiffs. Edith Rewis, an employee of Stewart Title-Polk, also witnessed the quitclaim deed without seeing or knowing the identity of the Plaintiffs.

It was the Plaintiffs who could not be at the closing and requested the contractor to bring the quitclaim deed to their home to sign. (Dkt. 31, Exh. B at 6). The contractor then took the signed quitclaim deed to the closing when it was notarized and witnessed.

This irregular procedure was not questioned until the Plaintiffs became dissatisfied with the cost and quality of the construction work on their residence. (Dkt. 31, Exh. B at 7). The Plaintiffs, at that time not being record title holders to the real property, filed on December 18, 1996, an Affidavit of Equitable Owner asserting that "[t]he intent of the parties to the contract was that affiants would convey the above described property to contractor who would obtain construction financing, build a home on the property and reconvey the property to affiants." (Dkt. 31, Exh. B at 7). The Plaintiffs continued to live in the home free of charge, and Damron Construction had defaulted on the Note in the principal amount of $156,000.00, which was secured by the Mortgage. This dispute resulted in the onset of the following litigation.

Case No. 1997CA-455
Allen Damron Construction Company v. Ronnie and Gloria Mickens

In 1997, Damron Construction sued the Plaintiffs, seeking specific performance of the construction contract and ejectment. The state circuit court entered a final judgment, initially in favor of the Plaintiffs on their counterclaim, in early 1998. (Dkt. 31, Exh.B at 4). The second District Court of Appeal, however, reversed the final judgment as "unsupported by the record and objected to by both parties." Allen Damron Constr. Co. v. Mickens, 725 So.2d 1174, 1175 (Fla. Dist. Ct. App. 1998). After another appeal to the Second District Court of Appeal, final judgment was finally entered and affirmed in the amount of $234, 854.64, in favor of Damron Construction, not Plaintiffs. (Dkt. 31, Exh. B at 4). The Plaintiffs' appeal from that final judgment, which was the third appeal from a final judgment, resulted in an affirmance. See Mickens v. Allen Damron Constr. Co., 890 So. 2d 1139 (Fla. Dist. Ct. App. 2004). As explained in that opinion, the damages awarded against Plaintiffs resulted from their refusal to permit court-ordered inspection of the

residence and their threats of bodily harm to anyone coming on the property. Plaintiffs sought review in the Florida Supreme Court and review was finally denied on July 20, 2005. See Mickens v. Allen Damron Constr. Co., No. SC05-257 (Fla. Jul 20, 2005) (denying petition for review without opinion).

Case No. 1998CA-1152
Ronnie and Gloria Mickens v. Allen Damron, et al.

Although the record from this case is sparse, one state circuit court order describes this case as involving claims brought by Plaintiffs against Stewart Title-Polk, Elaine Canady, and Edith Rewis for the improper and irregular process used in obtaining the quitclaim deed to the property. In any event, it appears that the various circuit court judges attempted a consolidation of all cases in the next case discussed, Case No. 1998CA-2977.

Case No. 1998CA-2977 (Consolidated with Case No. 1997CA-455 and 1998CA-1152) Stewart Title Guaranty Company v. Allen Damron Construction Company, Ronnie

and Gloria Mickens, et al., v. Stewart Title of Polk County, Inc., Elaine P. Canady, and Edith Rewis

In Case Number 1998CA-2977, Stewart Title Guaranty Company filed a mortgage foreclosure and equitable lien action naming Damron Construction, Allen Damron, Debra Damron, Ronnie Mickens, Gloria J. Mickens, and others as defendants. (Dkt. 31,Exh. B). The third-party claims brought b the Plaintiffs against Sewart Title-Polk, Elaine Canady, and Edith Rewis in Case No. 1998CA-2977 were dismissed and form the basis of the complaint in Case No. 1998CA-1152 referenced above. (Dkt. 31, Exh. B at 3). The foreclosure action was consolidated with Case Numbers 1997CA-455 and 1998CA-1152 on May 26, which were pending in the same state court.

After the April 2004 bench trial on the mortgage foreclosure and equitable lien action against Plaintiffs, the circuit court judge issued a very thorough order granting foreclosure and imposition of an equitable lien against the

Plaintiffs. (Dkt. 31, Exh. B). The judge made the following findings on May 14, 2004, in ruling that the equities were against Plaintiffs:

> Stewart Title-Polk should have been more prudent in the deed process but their poor judgment should not prevent them from getting an equitable lien on the houses. Mickens signed a deed without it being witnessed or notarized, and delivered it to Damron. Their intent to have a house built on their property was fulfilled. Clearly, Mickens received a substantial improvement and benefit to their land. The actions of Damron and Stewart Title were shortcuts in an attempt to accommodate Mickens and there is no evidence in the record that indicates that Damron or Stewart Title of Polk acted fraudulently, to the detriment of Mickens, although their conduct was contrary to the requirements of the law. Common

sense dictates an equitable lien should be imposed to prevent unjust enrichment.

....

Mickens may have suffered damages as a result of a contract dispute with Damron which was based upon the quality of the materials, workmanship, costs, and specifications of the contract. The defect of the quitclaim deed, however, has nothing to do with the causation of those damages. Had Section 689.01, Florida Statutes, been complied with, Mickens would still have the same dispute with Damron concerning construction discrepancies. Those construction disputes have already been addressed in 1997CA-455.

.....

Mickens points to one occasion of noncompliance of statutory requirements as the sole basis for them to get a free house. However, Mickens' conduct throughout the course of the seven years of litigation

> has been reprehensible to say the least. Mickens has conducted themselves for more lawlessly than Stewart Title Guaranty Company.

(Dkt. 31, Exh. B at 9-11). Plaintiffs unsuccessfully appealed this order to the Second District Court of Appeal. See Mickens v. Stewart Title Guaranty Co., No. 2D04-2699 (Fla.Dist.Ct.App. Mar 9, 2005) (affirming without opinion). Plaintiffs' attempt to seek review of the order in the Florida Supreme Court resulted in dismissal. See Mickens v. Stewart Title Guaranty Company, No. SC05-930 (Fla. Jun 1, 2005) (dismissing review without opinion).

The Instant Action

Two weeks later, Plaintiffs filed this action and a notice of lis pendens on June 15, 2005. (Dkts. 1 & 2). The Second Amended Complaint was filed on August 11, 2005 (Dkt. 28), and is the subject of the three pending motions to dismiss based on subject matter jurisdiction. The Second

Amended Complaint alleges twenty-six counts, all involving the same parties as those in the state court actions. The counts seek in part to cancel the quitclaim deed, to recover for breach of the construction contract, and for violations of various Florida Statutes pertaining to notaries and their conduct. The Plaintiffs charge that Defendants Stewart Title-Polk and the Damrons committed extrinsic fraud on the state court by obstructing Plaintiffs from joining indispensable parties and asserting defenses of res judicata, issue preclusion and law of the case. The Second Amended Complaint also alleges claims of racial discrimination, procedural and substantive due process violations, and equal protection violations, citing section 1983.

Analysis

The Rooker-Feldman abstention doctrine prohibits a federal district court from exercising jurisdiction to "review, reverse, or invalidate a final state court decision." Dale v. Moore, 121 F.3d 624, 626 (11th Cir. 1997). The doctrine

applies to, among other things, "claims that are inextricably intertwined with a state court judgment..." Goodman ex. rel. Goodman v. Sipos, 259 F. 3d 1327, 1332 (11th Cir. 2001). A federal claim is "inextricably intertwined ... if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." Id. The Supreme Court recently held that the Rooker-Feldman doctrine "is confined to cases of the king from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., ___U.S. ____, 125 S.Ct. 1517, 1521-22, 161 L.Ed.2d 454 (2005).

Recognizing that the Plaintiffs are pro se, the Court liberally construes the allegations of the Second Amended Complaint. Resolving all doubt in the pro se parties' favor, however, the Court concluded that the Rooker-Feldman

doctrine applies to preclude this Court from exercising jurisdiction. First, the federal claims are inextricably intertwined with the state court judgments and would succeed "only to the extent that the state court wrongly decided the issues before." Second, the application of Rooker-Feldman does not run afoul of Exxon in this case, because at least two of the three state court actions, which were ostensibly consolidated but traveled in separate files, had resulted in judgments rendered against Plaintiffs prior to the filing of this action.

Inextricably Intertwined

Plaintiffs try to convince this Court that they are not seeking to correct erroneous decisions of the state courts, but that they are seeking to set aside the state court judgments on the basis of "alleged extrinsic fraud" committed by Defendants which precipitated entry of the state court judgments. Plaintiffs assert that the extrinsic fraud "primarily consists of Defendants conspiring to maliciously

prosecute two frivolous foreclosure lawsuits without legal or equitable standing, without indispensable parties and by obstructing Plaintiffs of rights or defenses of res judicata, issue preclusion, state decisis and the law of the case." (Dkt. 40 at 3). Exactly what the collateral fraud entails is described by Plaintiffs as being exactly the same fraud that was adjudicated in the causes of action brought in state court. (Dkt. 40 at 3). Despite this situation, plaintiffs cling to the fact that in the very first order entered in Case No. 1997CA-455, they were successful. Plaintiffs neglect to mention, however, that the Second District Court of Appeal reversed that very first judgment, finding that it was unsupported by the record and objected to by both parties, including Plaintiffs.

Two of the state circuit courts even found that no fraud had been committed by Damron Construction or the Damrons individually. In its order vacating an order of dismissal for failure to prosecute in Case No. CA1998-1152,

the trial court noted in referring to the three state court cases that "[a]ll three cases arise from the same set of operative facts. The Damrons have been named and fraud has been alleged in all three cases." (Dkt. 40, Exh. A at 2). Another state court judge had previously found, in the final judgment imposing an equitable lien against Plaintiffs, that "there is no evidence whatsoever that Stewart Title of Polk or Damron intended any ill will against Mickens" and "there is no evidence in the record that indicates that Damron or Stewart Title of Polk acted fraudulently, to the detriment of Mickens, although there conduct was contrary to the requirements of the law." (Dkt. 31, Exh. B at 8 & 9). Thus, having reviewed the state court orders provided by the parties, the Court finds that the claims raised in this federal action are inextricably intertwined with those already raised and resolved in the state court actions.

Plaintiffs also contend that they did not have the opportunity to raise and litigate in the state court cases, the

independent causes of actions raised in this action, such as the violations of the Florida Statutes pertaining to the actions of a notary public and slander of title. Although this Court does not have before it all the pleadings in the state court cases, and therefore cannot determine whether the claims and defenses were actually raised in state court, the test for application of the Rooker-Feldman doctrine is not whether the claims were actually raised, but whether the claims could have been raised in the state court action. There is no question that the claims for discrimination and section 1983 violations, and of course all the alleged violations of the Florida Statutes, could have been raised in Florida courts.

The Timing of this Action in View of Exxon

At least one of the state court judgments, the one entered in the mortgage foreclosure and equitable lien action in Case No. 1998CA-2877 had become final-having had all available and non-available appellate avenues exhausted-as of June 1, 2005, which was fifteen days before the filing of this action.

The other judgment, the money judgment in Case No. 1997CA-455 against the Plaintiffs for failing to comply with court-ordered inspection of the property, had journeyed through appellate proceedings, and was finally ended on July 20, 2005. Although the instant case was filed a little over a month before the Florida Supreme Court denied review in that case, the adverse judgment had originally been rendered in May 2004.

Finally, in the last case, Case No. CA1998-1152, which was not being prosecuted the trial court noted the confusion associated with the initial consolidation and then apparent severance of the three cases. It was sufficiently confusing so as to constitute good cause to be relieved from an order of dismissal for failure to prosecute. Consequently, under the unique and convoluted circumstances of the three state court cases in this particular instance, the Court finds that the same facts and issues as raised in this action had been resolved unequivocally against Plaintiffs before Plaintiffs

filed the instant action, and that this conclusion is in keeping with the dictates of Exxon.

It is therefore **ORDERED AND ADJUDGED** as follows:

(1) Defendant Stewart Title Guaranty Company's Motion to Dismiss Second Amended Complaint with Prejudice (Dkt. 31 is **GRANTED.**

(2) Defendants Allen Damron Construction Company, Allen Damron and Debra Damron's Motion to Dismiss Second Amended Complaint (Dkt. 38) is **GRANTED**

(3) Defendants Stewart Title of Polk County, Florida, Elaine P. Canady, and Edith F. Rewis' Motion to Dismiss Second Amended Complaint with Prejudice (Dkt.41) is **GRANTED**

(4) The Second Amended Complain is dismissed with prejudice.

(5) The Notice of Lis Pendens of this lawsuit is hereby stricken and cancelled.

(6) The Clerk is directed to close this case.

DONE AND ORDERED at Tampa, Florida, on September 19, 2005.

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO: Counsel of Record and all Parties, pro se

No. 06-488

IN THE

Supreme Court of the United States

RONNIE MICKENS and GLORIA J. MICKENS,

Petitioners,

v.

STEWART TITLE GUARANTY COMPANY,
STEWART TITLE OF POLK COUNTY, FLA.,
ALLEN DAMRON CONSTRUCTION COMPANY,
ALLEN DAMRON, DEBRA DAMRON,
ELAINE P. CANADY, EDITH F. REWIS,
POLK COUNTY STATE ATTORNEY,
POLK COUNTY SHERIFF,
POLK COUNTY PROPERTY APPRAISER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT POLK COUNTY SHERIFF

JONATHAN B. TROHN
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Polk County Sheriff

QUESTIONS PRESENTED

1. Whether the decision of the Eleventh Circuit Court of Appeals conflicts with the decision of another United States Court of Appeals on the same important matter.

2. Whether the decision of the Eleventh Circuit Court of Appeals represents a departure from the accepted and usual course of judicial proceedings, or whether that decision sanctioned such a departure by the United States District Court for the Middle District of Florida, so as to require an exercise of the Supreme Court's supervisory power.

3. Whether the Eleventh Circuit Court of Appeals properly affirmed the District Court's dismissal of Petitioner's claims against Respondent Polk County Sheriff.

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STATEMENT OF JURISDICTION

Petitioners' original Complaint alleged multiple statutory, constitutional, and state-law claims against the Tenth Judicial Circuit Court in and for Polk County, Florida, the Second District Court of Appeals, Stewart Title Company, and Damron Construction. Petitioners eventually filed a Second Amended Complaint that reasserted their original claims and, for the first time, added as "third-party defendants" Respondent Polk County Sheriff, as well as the Polk County Property Appraiser and the Polk County State Attorney, asserting claims against these "third-party defendants" under 42 U.S.C. §§ 1983, 1985 and 2000e, *et seq.*, and 18 U.S.C. §§ 241 and 242 for conspiracy to violate civil rights, and alleging violations of their substantive and procedural due process and equal protection rights, as well as discrimination based upon their race. The District Court dismissed Petitioners' action in its entirety. Petitioners then appealed to the United States Court of Appeals for the Eleventh Circuit, which affirmed the decision of the District Court.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The Court of Appeals issued its decision on May 22, 2006 [Pet'rs' App. 27a] and denied Petitioners' motion for rehearing on July 11, 2006 [Pet'rs' App. 25a]. The Petition was filed on October 3, 2006 and docketed on October 6, 2006.

STATEMENT OF THE CASE[1]

Petitioners, Ronnie and Gloria Mickens, proceeding pro se, filed their original Complaint on or about June 15, 2005. (Doc. No. 1). The District Court, by Order dated June 17, 2005, struck Petitioners' Complaint for failure to conform to the pleading requirements of the Federal Rules of Civil Procedure. Petitioners filed an Amended Complaint on or about June 28, 2005. (Doc. No. 6). By Order dated July 13, 2005, the District Court struck the Amended Complaint, citing Petitioners' continued failure to comply with the pleading requirements of the Federal Rules of Civil Procedure. (Doc. No. 14).

Petitioners filed their prolix, twenty-six (26) count Second Amended Complaint on August 11, 2005. (Doc. No. 28). The Second Amended Complaint added Respondent Polk County Sheriff ("Sheriff") as well as the Polk County Property Appraiser and the Polk County State Attorney, as "third party defendants" (collectively, "Polk County Defendants"). The Polk County Defendants were named as "third-party defendants" only in Counts I, III, IV, V, and VIII. (Doc. No. 28). Count I asserted a claim for conspiracy to violate civil rights under 42 U.S.C. § 1985(3). In Count III, Petitioners asserted a claim under 42 U.S.C. § 1983 and 18 U.S.C. §§ 241 and 242 for violations of their substantive

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1. The Polk County Respondents submit this statement of the case because the statement provided by Petitioners is so filled with argument and hyperbole that it fails to present a simple statement of facts pertinent to this appeal. Furthermore, this Brief in Response will refer to the district court docket numbers to identify documents in the record below as Petitioners did not include all relevant documents in their appendix, nor did they contact Respondents in an attempt to create joint appendix.

due process rights. Count IV is a claim under 42 U.S.C. § 1983 and 18 U.S.C. §§ 241 and 242 for violation of Petitioners' procedural due process rights. In Count V, Petitioners allege violations of their equal protection rights under 42 U.S.C. § 1983 and 18 U.S.C. §§ 241 and 242. Finally, in Count VIII Petitioners assert a claim under the Civil Rights Act of 1964 and 1991, claiming they suffered racial discrimination.

Petitioners alleged the Sheriff, along with the other "Third-Party Defendants," acted "under color of law . . . to cover and conceal all defendants' acts of fraud, civil theft forgery, conspiracy, false pretenses . . ." and conspired "to cover and conceal Defendants' crimes and torts to deprive [Petitioners] of their property and their civil rights based on race." (Doc. No. 28 at ¶¶ 50-54). The individual counts alleged against the "Third-Party Defendants" contain similar conclusory allegations. For example, in Count I Petitioners alleged the "Third-Party Defendants" conspired with the primary Defendants "to stigmatize [Petitioners] and to violate [Petitioners'] rights to free speech, redress, due process, equal protection of the law and the right to own real property" and "attempt[ed] to extricate Defendants from their fraud and from their liability . . . to [Petitioners'] detriment." (Doc. No. 28 at ¶ 58). Petitioners further alleged in Count III that the "Third-Party Defendants" failed "to protect, consider, follow, enforce or apply the laws . . . to prevent Defendants [sic] crimes and torts to [Petitioners'] detriment." (Doc. No. 28 at ¶ 70). Likewise, in Count IV Petitioners alleged that the "Third-Party Defendants intentionally failed to protect [Petitioners'] civil right [sic] and failed to consider, investigate, charge and prosecute Defendants for fraud, forgery, theft, conspiracy, false pretenses. . . ." (Doc. No. 28 at ¶ 74). Petitioners' vague allegations continued into Count

V where they asserted the "Third-Party Defendants have violated [their] right to equal protection by violating their rights to due process, redress, free speech, life, liberty and property." (Doc. No. 28 at ¶ 79). Finally, in Count VIII Petitioners asserted that "[a]ll Third-Party Defendants conspired with Stewart Title and the Damrons to systematically deprive [Petitioners] of Due Process, Equal Protection of the Laws, and Redress for conspiracy, forgery, false pretenses . . . based on race." (Doc. No. 28 at ¶88).

The Sheriff moved to dismiss the Second Amended Complaint, asserting it failed to state a cause of action for civil conspiracy, extrinsic fraud on the court, and violation of substantive and procedural due process and equal protection rights as the complaint was predicated upon contracts to which the Sheriff was neither a party nor in privity of contract with any parties to those contracts. (Doc. No. 34). The Sheriff additionally moved to dismiss the civil conspiracy claims based on Petitioners' failure to allege the existence of a conspiracy in clear, positive, and specific terms, and the failure to support their conspiracy claims with any description of overt acts. (Doc. No. 34). Petitioners filed no response.

The District Court, by order dated August 29, 2005, dismissed the Second Amended Complaint with prejudice with respect to the Sheriff, the Polk County Property Appraiser, and the Polk County State Attorney, on the basis that the suit against these parties, as "Third-Party Defendants," was "procedurally impossible under Rule 14(a), Federal Rules of Civil Procedure." (Doc. No. 36). The court concluded the Second Amended Complaint against the Sheriff, State Attorney, and Property Appraiser, as "Third-Party Defendants," amounted to "a legal nullity which does

not permit the Court to adjudicate the rights of Plaintiffs and these Defendants nor to enter judgment for Plaintiffs." (Doc. No. 36 at 2). In so ruling, the court noted Petitioners' status as pro se litigants, recognizing the court's obligation to review their complaint "more liberally than one prepared by an attorney." (Doc. No. 36 at 2). The District Court nevertheless concluded that Petitioners, even as pro se litigants, were bound by the same rules of procedure as all other litigants, including those represented by counsel. (Doc. No. 36 at 2).

Petitioners then filed a Motion for Reconsideration. (Doc. No. 49). The motion, however, did not address the dismissed claims against the Polk County Defendants, but instead focused on the jurisdictional argument at issue with Petitioners' claims against the non-governmental defendants. By Order dated September 26, 2005, the District Court denied the Motion for Reconsideration (Doc. No. 50), and on or about October 3, 2005, Petitioners' filed their Notice of Appeal of the various orders dismissing their claims, including the Order dismissing their claims against the Polk County Defendants. (Doc. No. 51).

SUMMARY OF ARGUMENT

Petitioners have failed to show that the decision of the Eleventh Circuit Court of Appeals conflicts with any decision of another court of appeals on the same matter, or that the decision of the Eleventh Circuit Court of Appeals or the District Court for the Middle District of Florida departed from the usual and accepted course of judicial proceedings. Accordingly, Petitioners have failed to set forth a basis for review by this Court. Moreover, the Eleventh Circuit Court of Appeals properly affirmed the District Court's dismissal of Petitioner's claims against the Sheriff.

REASONS FOR DENYING THE PETITION

I. There Exists No Compelling Reason For Granting The Petition For Writ Of Certiorari.

As Supreme Court Rule 10 states, a petition for writ of certiorari "will be granted only for compelling reasons," including, among other things, that a "United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter," or "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." In fact, these are the very grounds cited by Petitioners as a basis for certiorari review. However, while Petitioners cite the grounds for review found in Rule 10, they fail to show that the decision of the Eleventh Circuit Court of Appeals conflicts with any decision of another court of appeals on the same matter. In fact, no where in their Petition do they identify a single court of appeals decision that conflicts with the decision of the Eleventh Circuit Court of Appeals in this particular case. Furthermore, Petitioners fail to set forth how the decision of the Eleventh Circuit Court of Appeals or the District Court for the Middle District of Florida departed from the usual and accepted course of judicial proceedings.

Rule 10 specifically states that review by certiorari is "not a matter of right, but of judicial discretion." The Rule further provides that such review is "rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." In the instant matter, Petitioners have failed to identify any facts justifying review. At best, Petitioners have alleged the

misapplication of law to fact or procedural error, which does not meet the requirements for certiorari review. Because Petitioners have failed to demonstrate a compelling basis for granting their petition, review by this Court is not warranted. Accordingly, the Petition for Writ of Certiorari should be denied.

II. The Eleventh Circuit Properly Affirmed The District Court's Dismissal Of Petitioner's Claims Against The Sheriff.

A. Petitioners' claims, as stated against the "Third Party Defendants," failed to state a claim for which relief could be granted.

In addition to failing to set forth a sufficient basis for certiorari review, Petitioners fail to make any argument showing the Eleventh Circuit Court of Appeals improperly affirmed the district court's dismissal of their claims against the Sheriff. Because Petitioners failed to state a claim against the Sheriff for which relief could be granted, the Eleventh Circuit properly affirmed the dismissal of these claims with prejudice.

Petitioners, as pro se litigants, are entitled to a liberal review of their complaint. However, they are nevertheless bound to follow the Federal Rules of Civil Procedure as any other litigant is required to do. *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989); *McGill v. Faulkner*, 18 F.3d 456, 458 (7th Cir. 1994); *Harvey v. United States*, 2005 U.S. Dist. LEXIS 31109, *44-45 (D. Col. Nov. 28, 2005). As the Eleventh Circuit explained, because Petitioners erroneously named the Sheriff and the other Polk County Defendants as 'third-party defendants,' Petitioners sought relief from a party

against whom no relief could be granted under the Federal Rules of Civil Procedure. [Pet'rs' App. 58a]. Under Rule 14, a third-party defendant may be brought in by a defending party, as a third-party plaintiff. Fed.R.Civ.P. 14(a). A third-party defendant is "not a party to the action [but] who is or may be *liable to the third-party plaintiff* for all or part of the *plaintiff's claim against the third-party plaintiff.*" Fed.R.Civ.P. 14(a)(emphasis added). As such, the third-party complaint adjudicates rights as between the defendant and a person or entity who is otherwise not a party to the plaintiff's action. In the instant case, the Petitioners, *on their third attempt*, erroneously sued the Polk County Defendants as third-party defendants. Because such a claim is not legally possible, the claims were properly dismissed with prejudice.

B. Dismissal with prejudice was proper because amendment would be futile.

Because the record contained ample support for the dismissal of Petitioners' claims, the Eleventh Circuit properly affirmed the dismissal of their claims with prejudice. Denial of leave to amend is "justified by futility when the complaint as amended is still subject to dismissal." *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004)(citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *see also Gohier v. Enright*, 186 F.3d 1216, 1218-19 (10th Cir. 1999); *Kay v. New Hampshire Democratic Party*, 821 F.2d 31, 34 (1st Cir. 1987). Furthermore, as the Eleventh Circuit noted, the District Court, in granting Petitioners leave to file a second amended complaint, warned Petitioners that such leave would be "the last opportunity [Petitioners would] be afforded to amend . . . ." [Pet'rs' App. 60a]. Courts need not grant leave to amend where there has been, among other things, "repeated failure to cure deficiencies by amendments previously

allowed." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001)(citing *Foman*, 371 U.S. at 182); *see also Benzon v. Morgan Stanley Distribs.*, 420 F.3d 598, 613 (6th Cir. 2005). Even after several amendments, Petitioners still failed to present viable causes of action against the Sheriff and the other Polk County Defendants, and accordingly, the dismissal with prejudice was properly affirmed.

First, Petitioners' conspiracy claim in Count I fails as a matter of law. Plaintiffs must allege four requirements to state a cognizable § 1985(3) conspiracy claim:

> (1) a conspiracy, (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, (3) and an act in furtherance of the conspiracy, (4) whereby a person is either injured in his person or property or denied of any right of privilege of a person of the United States.

Trawinski v. United Techs., 313 F.3d 1295, 1299 (11th Cir. 2002); *see also Johnson v. City of Shorewood*, 360 F.3d 810, 817-18 (8th Cir. 2004); *Brown v. City of Oneonta*, 221 F.3d 329, 341 (2d Cir. 1999). The core of a conspiracy claim is an agreement between the parties; where the plaintiff fails to allege this element, the pleading is deficient and subject to dismissal. *Bailey v. Board of County Comm's of Alachua County*, 956 F.2d 1112, 1122 (11th Cir. 1992); *see also Jensen v. Henderson*, 315 F.3d 854, 862 (8th Cir. 2002); *Simmons v. Poe*, 47 F.3d 1370, 1376-77 (4th Cir. 1995). Furthermore, where a plaintiff merely alleges "conclusory, vague, and general allegations of conspiracy," dismissal of the

conspiracy claim is proper. *Kearson v. Southern Bell Tel. & Tel. Co.*, 763 F.2d 405, 407 (11th Cir. 1985); *Harvey v. Harvey*, 949 F.2d 1127, 1133 (11th Cir. 1992); *Simmons*, 47 F.3d at 1377; *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986). "It is not enough to simply aver in the complaint that a conspiracy existed." *Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984).

The allegations in the Second Amended Complaint fall far short of meeting the prima facie pleading requirements for a civil conspiracy claim under § 1985(3) as Petitioners do no more than state that a conspiracy to "cover and conceal" other Defendants' "crimes and torts" exists. (Doc. No. 28 at ¶¶ 52, 54, 55). Petitioners failed to plead any meeting of the minds or agreement between any of the Defendants or Third-Party Defendants, and failed to otherwise allege any acts in furtherance of the conspiracy to support such a claim. As such, the dismissal of their claims under § 1985(3) with prejudice was properly affirmed.

Second, Petitioners' extrinsic fraud claims were properly dismissed. Under Florida law, the plaintiff must plead each essential element of fraud with particularity, including that the defendant made a false statement regarding a material fact; that the defendant knew the statement was false when the statement was made; that the defendant intended that the plaintiff rely and act upon the false statement; and that the plaintiff justifiably relied upon the false statement to his detriment." *Simon v. Celebration Co.*, 883 So.2d 826, 832 (Fla. 5th DCA 2004); *Held v. Trafford Realty Co.*, 414 So.2d 631, 632 (Fla. 5th DCA 1992). Federal pleading standards likewise require plaintiffs to allege fraud with particularity. *See* Fed.R.Civ.P. 9(b); *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1012 (11th Cir. 2005).

Petitioners, however, alleged nothing more than that the Third-Party Defendants engaged in a fraud on the court. Such conclusory, factually unsupported, and vague allegations violate the requirements of Federal Rule of Civil Procedure 9(b), fail to provide any notice of the nature of the claims alleged against any of the Defendants, and fail to allege the requisite elements of fraud under Florida law. Moreover, the very definition of "extrinsic" fraud precludes any action against the Sheriff or other Polk County Defendants. As this Court has explained, extrinsic fraud occurs "[w]here the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception *practiced on him by his opponent*, as by keeping him away from court, a false promise of a compromise, or where the defendant never had knowledge of the suit" due to the acts of the plaintiff. *United States v. Throckmorton*, 98 U.S. 61, 65-66 (1878)(emphasis added); *see also Fiero v. Johnson*, 197 F.3d 147, 155 (5th Cir. 1999); *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 561 (7th Cir. 1999). Florida courts have similarly defined extrinsic fraud

> as the prevention of an unsuccessful party [from] presenting his case, by fraud or deception practiced by his own adversary; keeping the opponent away from court; falsely promising a compromise; ignorance of the adversary about the existence of the suit or the acts of the plaintiff; fraudulent representation of a party without his consent and connivance in his defeat. . . .

Huffman v. Delecruz, 719 So.2d 385, 386 (Fla. 4th DCA 1998)(citing *Fair v. Tampa Electric Co.*, 27 So.2d 514, 515 (Fla. 1946)).

Petitioners, however, failed to allege any facts that would show the Sheriff or other Polk County Defendants prevented Petitioners, in any way, from participating in any state court action. The Eleventh Circuit properly affirmed the dismissal with prejudice as Petitioners failed to allege the Polk County Defendants perpetrated an extrinsic fraud and failed to plead such alleged fraud with particularity.

Third, Petitioners failed to state a claim alleging a violation of their substantive and procedural due process rights. In the counts alleging violations of their due process rights, Petitioners alleged the Third-Party Defendants acted under color of law to "cover and conceal" the actions of the primary Defendants and that the Third-Party Defendants "conspired with" each other and the primary Defendants to "fraudulently convey Plaintiffs [sic] real property . . . without Plaintiffs' knowledge or consent," to "cover and conceal Defendants [sic] crimes and torts to deprive Plaintiffs of their property and their civil rights base [sic] on race," and to "deprive Plaintiffs of due process, equal protection of the laws and rights to redress." (Doc. No. 28 at ¶¶ 50-54).

Petitioners' procedural due process claim failed to state a claim for which relief could be granted. The Fourteenth Amendment's Due Process Clause provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend XIV, § 1. In order to establish a violation of procedural due process rights under 42 U.S.C. § 1983, the plaintiff must establish the deprivation of a constitutionally protected liberty or property interest, state action, and a constitutionally inadequate process. *Arrington v. Helms*, 438 F.3d 1336, 1347 (11th Cir. 2006); *Lekas v. Briley*, 405 F.3d 602, 607 (7th Cir. 2005). Even if Petitioners had alleged state action and the deprivation of a

protected interest, they failed to allege that there existed a process, inadequate by constitutional standards, to remedy the alleged violations. *See, e.g., Horton v. Board of County Comm'rs of Flagler County*, 202 F.3d 1297, 1300 (11th Cir. 2000). Accordingly, that claim was properly dismissed.

Petitioners' substantive due process claims likewise failed to state a claim for which relief could be granted. While Petitioners vaguely assert the Third-Party Defendants conspired with the primary Defendants to deprive them of their property, due process and equal protection rights, and the right to redress, they fail to establish any violation – by the Third Party Defendants or any other party – of a fundamental right. In order to state a claim for violation of substantive due process rights, the plaintiff must allege a violation of a fundamental right. *See Behrens v. Regier*, 422 F.3d 1255, 1264 (11th Cir. 2005); *Hill v. Borough of Kutztown*, 455 F.3d 225, 235 (3d Cir. 2006); *Medeiros v. Vincent*, 431 F.3d 25, 32 (1st Cir. 2005); *see also McKinney v. Pate*, 20 F.3d 1550, 1556 (11th Cir. 1994)("The substantive component of the Due Process Clause protects those rights that are 'fundamental,' that is, rights that are 'implicit in the concept of ordered liberty'"); *Greenbriar Village, LLC v. City of Mountain Brook*, 345 F.3d 1258, 1262 (11th Cir. 2003) (explaining that fundamental rights are those created by the Constitution). In light of Petitioners' conclusory allegations, and the absence of any allegation of a violation of fundamental rights, Petitioners' substantive due process claims were properly dismissal.

Fourth, Petitioners failed to state a claim for violation of their equal protection rights. The Equal Protection Clause mandates that the government treat similarly situated individuals alike. U.S. Const., Amend. XIV, § 1. To properly

plead a violation of equal protection rights, the plaintiff must allege that through state action motivated by an unlawful factor, the plaintiff was treated differently than others similarly situated. *Draper v. Reynolds*, 369 F.3d 1270, 1278 n.14 (11th Cir. 2004), *cert. denied*, 543 U.S. 988 (2004); *Thigpen v. Bibb County*, 223 F.3d 1231, 1237 (11th Cir. 2000); *Mercer v. Hammonds*, 134 F.3d 1066, 1070 (11th Cir. 1998).

Petitioners' equal protection claim does nothing other than state their conclusion that the "Third-Party Defendants . . . violated [their] right to equal protection by violating their rights to due process, redress, free speech, life, liberty, and property." (Doc. No. 28 at ¶ 79). Petitioners failed to allege that any Third-Party Defendant harbored an intent to discriminate against them, other than a few factually unsupported, conclusory statements that their rights were violated based on their race. Petitioners, however, also failed to allege that they were treated differently than others similarly situated. The Second Amended Complaint fails to identify one similarly situated individual who was treated differently than the Mickens. As this Court noted in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985), the Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." Because Petitioners' Second Amended Complaint failed to identify any similarly situated individuals or otherwise assert that they were treated differently than such individuals, the Eleventh Circuit properly affirmed the dismissal of their equal protection claim.

Finally, the Eleventh Circuit properly affirmed the dismissal of Petitioners' claim for relief against the Polk County Defendants under the Civil Rights Act of 1964 and 1991 for discrimination based on race. That claim fails to

state a claim for which relief can be granted because it fails to identify any particular section of the Act or any particular action of any Defendant that violated the Act. Rather, this claim merely restates Petitioners' conspiracy claims under § 1985(3). More importantly, they failed to allege particular facts to support this claim.

Like the rest of Petitioners' Second Amended Complaint, this claim merely assumes a violation of an unspecified right without setting forth one fact to support their claim, whatever that may be. Because this claim – like all others asserted in the Second Amended Complaint – fails to set forth any facts to support Petitioners' assertion that their unspecified rights were violated, dismissal of this claim was warranted and the Eleventh Circuit properly affirmed same.

CONCLUSION

The Eleventh Circuit Court of Appeals properly affirmed the District Court's dismissal of Petitioners' Second Amended Complaint with prejudice because, as alleged against the Sheriff and other Polk County Defendants, Petitioners failed to state a claim upon which relief could be granted. More importantly, Petitioners have failed to identify a single decision of a United States court of appeals that conflicts with the Eleventh Circuit's decision in this case. Finally, because Petitioners, despite the filing of multiple complaints, failed to advance a viable claim for any particular violation of state or federal law, it cannot be said that the Eleventh Circuit's decision affirming the dismissal with prejudice departed from the usual and accepted course of judicial proceedings. Accordingly, because Petitioners have demonstrated no ground for review by certiorari, this Court should deny their petition.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

RONNIE MICKENS and
GLORIA J. MICKENS,

Petitioners

v.

STEWART TITLE GUARANTY COMPANY, *et al.*,

Respondents

CASE NUMBER 06-488

Response to the Petition of Certiorari by
Stewart Title of Polk County, Florida,
Elaine P. Canady and Edith F. Rewis, Respondents

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IN THE

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LIST OF INTERESTED PARTIES

Stewart Title Guaranty Company

Stewart Title of Polk County, Florida

Allen Damron Construction Company

Allen Damron

Debra Damron

Elaine P. Canady

Edith F. Rewis

Florida State Attorney, 10th Judicial Circuit

Polk County Sheriff

Polk County Property Appraiser

LIST OF PARENT OR PUBLICLY HELD COMPANY

Stewart Information Service Corporation (SISCO)

IN THE

SUPREME COURT OF THE UNITED STATES

RONNIE MICKENS and GLORIA J. MICKENS,

Petitioners,

vs.

STEWART TITLE GUARANTY COMPANY, *et al.*,

Respondents.

Response to the Petition for Certiorari by Respondents,
Stewart Title of Polk County, Florida,
Elaine P. Canady and Edith F. Rewis

RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

SUMMARY OF THE ARGUMENT

I. The decisions of the District Court and the Court of Appeals in correct because the Court did not have jurisdiction to review the final decisions of the Florida Courts pursuant to the Rooker-Feldman Doctrine.[1]

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[1] *Rooker vs. Fidelity Trust Company*, 263 U.S. 413(1923); and District of Columbia Court of Appeals vs. Feldman, 460 U.S. 462 (1983).

II. The decisions of the Florida Circuit and District Court of Appeals are inextricably intertwined with the relief sought in Federal Court.

ARGUMENT I

The Rooker-Feldman Doctrine as interpreted by this Court bars "cases brought by state-court losers complaining of injuries caused by state court judgments rendered before the District Court proceedings commenced and inviting District Court review and rejection of those judgments" *Exxon Mobil Corporation vs. Saudi Basic Industries Corporation*, 544 U.S. 288, 125 S.Ct. 1517, 161 Law Ed 2d 454 (2005). The decisions of the Florida Circuit and District Court of Appeals are set forth in the opinion of the District Court. There the District Court found that there were decisions rendered against Petitioners which were final before the action was filed in the District Court. Petitioners' Brief, Appendix, pages 81a through 83a.

As noted by the Court's decision in Exxon Mobil, the Federal District Courts are empowered to exercise original, not appellate,

jurisdiction. As did the Plaintiffs in Rooker and Feldman, the Petitioners here litigated their case several times in State Court. In each instance, Petitioners lost. The complaints in the District Court below were filed after the decisions against the Petitioners were entered by the Florida appellate courts.

ARGUMENT II

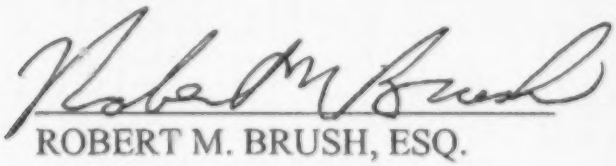
The relief sought in the federal court is inextricably intertwined with the relief sought in circuit court. Accordingly, Rooker-Feldman precludes jurisdiction by the District Court. As noted in Exxon, the District Court correctly determined that the Rooker-Feldman Doctrine applies to claims that are inextricably intertwined with a State Court Judgment citing the *Goodman v. Sypose*, 259 Fed. 3rd 1327, 1332 (11th Circuit, 2001). In *Industrial Communications and Electronics, Inc. v. Monroe County*, 134 Fed. Appx. 314 (11th Circuit, May 2005), the Eleventh Circuit correctly determined that the Rooker-Feldman Doctrine applies to claims litigated as well as those not raised in state court but which could have been raised and which were inextricably intertwined with the state court judgment. 134 Fed.Appx. 317

CONCLUSION

The decisions of the District Court and the U.S. Court of Appeals, Eleventh Circuit, are correct. The District Court did not have jurisdiction over the claims brought by Petitioners in that Court. The decision of the Eleventh Circuit, based upon its de novo review, was correct for the reasons set forth in its opinion.

Wherefore, the Respondents herein respectfully request that Petitioners' Petition for Certiorari be denied.

Respectfully submitted,



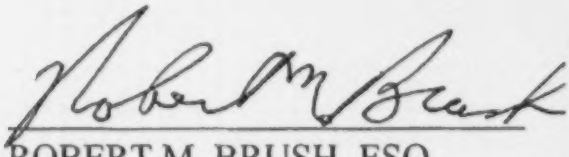
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Florida Bar No: 349992

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2006, a true and correct copy of this brief was provided by U.S. Mail to: Ronnie Mickens and Gloria Mickens, 6420 Odom Road, Lakeland, FL 33809; Mark M. Schabacker, Esquire, 201 E. Kennedy Blvd., Ste. 460, Tampa, FL 33602; Benjamin W. Hardin, Jr., Esquire, P.O. Box

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No. 06-488

IN THE

SUPREME COURT OF THE UNITED STATES

RONNIE MICKENS and
GLORIA J. MICKENS,

Petitioners

v.

STEWART TITLE GUARANTY COMPANY,
et al.,

Respondents

Petition for a Rehearing for a Writ of Certiorari to the
United States Court of Appeals
Eleventh Circuit

PETITION FOR REHEARING FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the district court and the appeal court decisions conflict with the decisions of the United States Supreme Court and with the authorities' decisions of every other District and United States Court of Appeals that has addressed these issues.

2. Whether Rooker-Feldman doctrine bars the District Court's subject matter jurisdiction when petitioners allege that the respondent's extrinsic fraud on the state court obtained two fraudulent judgments against petitioners.

3. Whether the Rooker-Feldman doctrine bars the district court's subject matter jurisdiction when Petitioners are constitutionally entitled to a judgment against the Respondents based on the merits and as a matter of law.

4. Whether the Rooker-Feldman doctrine bars the district court's subject matter jurisdiction when the Respondents extrinsic fraud on the state court extricated them

from their violations of the very strict requirements of Florida Statutes, Section 689.01, 117.05, 117.105 and 117.107 .

5. Whether Rooker-Feldman doctrine bars the District Court's subject matter jurisdiction when petitioners allege indisputable statutory fraud, cancellation of deed, quiet title, ejectment, breach of construction contract, notary's failure to validate signatures, notary's malfeasance and misfeasance in the conduct of official duties, notary's false or fraudulent acknowledgment, notary's performance of prohibited acts, equitable estoppel, civil conspiracy, negligence, conversions, fraudulent conveyance, and slander of title claims and causes of actions.

6. Whether Rooker-Feldman doctrine bars the District Court's subject matter jurisdiction when petitioners second amended complaint alleges six new non-governmental indispensable parties, three new governmental parties, independent section 1983 substantive, procedural and

stigmatization due process claims, independent section 1983 equal protection and first amendment claims, independent section 1985 (3) conspiracy claims, independent Title VII retaliation and race claims, independent extrinsic fraud claims, ten new state court claims along with five previous causes of action adjudicated in petitioners favor.

7. Whether the District court has parallel and concurrent subject matter jurisdiction with state court Case No. 1998CA-1152.

8. Whether the Rooker-Feldman doctrine bars the district court's jurisdiction when respondents' extrinsic fraud on the state court fraudulently fabricated a trial in state court Case No. 1998CA-2977.

9. Whether the Rooker-Feldman doctrine bars the district court's subject matter jurisdiction when respondent's extrinsic fraud on the state court caused one lawsuit to be split into three separate lawsuits that deprived petitioners of due process and equal protection of the laws.

11. Whether the Rooker-Feldman doctrine bars the district court's subject matter jurisdiction when Respondents conspired to fraudulently seize and convey Petitioners' real property via a "special warranty deed" in April 2004.

12. Whether the Rooker-Feldman doctrine bars the district court's subject matter jurisdiction when the Respondents extrinsic fraud on the state court deprived Petitioners of a full, fair and impartial jury trial.

LIST OF PARTIES' JUDGMENTS SOUGHT TO BE REVIEWED

Stewart Title Guaranty Company

Stewart Title of Polk County, Fla.

Allen Damron Construction Company

Allen Damron

Debra Damron

Elaine P. Canady

Edith F. Rewis

Polk County State Attorney

Polk County Sheriff

Polk County Property Appraiser

LIST OF PARENT OR PUBLICLY HELD COMPANY TO BE LISTED

Stewart Information Service Corporation (SISCO)

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JURISDICTIONAL STATEMENT

Jurisdiction is based on a United States Court of Appeals that has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter and has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. The dates of the orders that petitioners Mickens are seeking to be reviewed are July 11, 2006, May 22, 2006, September 19, 2005, September 9, 2005 and August 29, 2005.

STATUTORY PROVISIONS INVOLVED

This appeal concerns whether the Rooker-Feldman doctrine bars the federal district court's subject matter jurisdiction when state court judgments were obtained by fraud in violation of Florida Statute Chapter 65, 66, , 812 and Florida Statutes, Sections 689.01, 117.05, 117.105, 117.107, 831.01, 831.02.

STATEMENT OF THE CASE AND FACTS

This case is about whether the Rooker-Feldman doctrine bars the district court's subject matter jurisdiction when petitioners allege that the Rooker-Feldman doctrine is being used as a pretext to conceal the Respondents fraud, individualized racism and Petitioners' state court final judgment on the merits.

As a matter of law it is unconstitutional for respondents to be lawfully awarded a valid $234, 854.64 final judgment and a valid foreclosure final judgment against petitioners and petitioners property to benefit them for their fraudulent actions. In state court, the respondents obtained a fraudulent $234, 584.64 money judgment and a foreclosure judgment against Petitioners without legal or equitable standing, without a right of action and without a claim or cause of action.

The federal district court and appeals court fundamentally erred when they determined that the

meritorious adjudicated issues, facts, findings, claims, and orders were reversed in state court Case No. 1997CA-0455. .

ARGUMENT I

THE LOWER COURTS HAS ENTERED DECISIONS IN THIS CASE THAT CONFLICTS WITH THE DECISIONS OF ALL OTHER UNITED STATES COURTS OF APPEALS AND THE SUPREME COURT ON THE SAME IMPORTANT MATTER, AND HAS DEPARTED FROM THE ACCEPTED AND REQUIRED COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT'S SUPERVISORY POWER

It has long been the law that a plaintiff in federal court can seek to set aside a state court judgment obtained through fraud. In Barrow v. Hunton, 99 U.S. (9 OHO) 80, 25 L. Ed. 407 (1878), the Supreme Court distinguished between errors by the state court, which could not be reviewed in federal district court, and fraud on the state court, which could be the basis for an independent suit in the federal court. See Mackay v. Feil, 827 F. 2d 540, 543-44 (9th Cir. 1987).

Extrinsic fraud on a court is, by definition, not an error by that court. It is, rather, a wrongful act committed by

the parties who engaged in the fraud. In the words of Noel v. Hall, 341 F. 3d 1148, 1154 (9th Cir.2003), petitioner's does not assert "as a legal wrong an allegedly erroneous decision by a state court" but rather "an allegedly illegal acts or omissions by adverse parties.

When there is parallel state and federal litigation, Rooker-Feldman is not triggered simply by the entry of judgment in state court. Rooker nor Feldman supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment on the same or related question while the case remains sub judice in a federal court. The district court presently has parallel jurisdiction with state court case no. 1998-CA-1152. The district court admitted that petitioners commenced this federal action before state court case no. 1997-CA-0455 was considered to be complete in state court.

The Rooker-Feldman doctrine does not bar the district court's subject matter jurisdiction when Respondent(s)

extrinsic fraud obtained a fraudulent state court judgments because Petitioners objected to a unlawful remedy or order that was for the benefit of the Respondents, the losing party(s). Petitioners Mickens were not in a mortgage relationship with the respondent(s). The Respondent(s) fraudulently seized Petitioners property.

The Rooker-Feldman doctrine does not bar the district court's subject matter jurisdiction because Respondents extrinsic fraud obstructed the joinder of Stewart Title Guaranty Company, Stewart Title of Polk, Allen and Debra Damron, Canady and Rewis in state court case nos. 1997-CA-0455 and Stewart Title of Polk, Damron Construction, Allen and Debra Damron, Canady and Rewis in state court case nos. 1998-CA-2977. It is unconstitutional for respondents to be granted a $234,584.64 final judgment and a foreclosure final judgment as awards for violating the very strict requirements of Florida Statutes, Sections 689.01, 117.05, 117.105, 117.107.

The Rooker-Feldman doctrine does not bar the district court's subject matter jurisdiction because respondents extrinsic fraud on the state court violated principles of issue preclusion, res judicata, the law of the case, stare decisis, unclean hands, bona fide purchaser for value, legal and equitable standing, right and cause of action, de nova trial, procedural due process and equal protection of the laws.

The Rooker-Feldman doctrine does not bar the district court's subject matter jurisdiction because respondents extrinsic fraud on the state court extricated them from their violations of the strict requirements of Florida Statutes, Section 689.01 in state court. The District Court and the 11th Circuit Court of Appeals erred by failing to consider Respondents Stewart Title Guaranty Company, it's employees and agents violations of the very strict requirements of Florida Statutes, Sections 689.01, 117.05, 117.105, 117.107. Florida Statutes 689.01 states in pertinent part:

"No estate...or any uncertain interest of, in or out of any ...lands ...shall be created, made, granted, transferred or released in any manner than by instrument in writing, signed in the presence of two subscribing witnesses by party creating, making, granting, conveying, transferring or releasing such estate, interest, ...and no estate ...or any uncertain interest of, in to or out of any ...lands...shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's agent thereunto lawfully authorized, or by the act and operation of law."

Section 117.05 "Notary's failure to validate signatures"
Section 117.105 "Notary's fraudulent Acknowledgment"
Section 117.107 "Notary's performance of prohibited acts".

If a deed does not comply with the statutory requirements of Florida Statutes, Section 689.01 the deed does not create any legal rights in the real property. See Girard v. Trembley, 384 So. 2d 39 (Fla. 3d DCA 1980); Walker v. City of Jacksonville, 360 So. 2d 52 (Fla. 1st DCA 1978).

The Rooker-Feldman doctrine does not apply because in April, 2004, the respondents fraudulently created and recorded in the Polk County Property Public Records without authority or a court order a fraudulent "special warranty deed

that was used to supplant Petitioners Mickens' warranty deed. The respondents **VOID AB INITIO** quitclaim deed did not convey any rights, interests, claims or title in petitioners' private real property to anyone.

The Rooker-Feldman doctrine does not bar the district's court subject matter jurisdiction because this lawsuit joins for the first time all the indispensable parties as defendants/respondents and claims in the same lawsuit. The respondents relationships and interests have not been considered in the same lawsuit. Petitioners Mickens have not been afforded an opportunity to litigate against respondents Stewart Title Guaranty Co.,Stewart Title of Polk, Canady, Rewis, Allen and Debra Damron as parties.

The Rooker Feldman doctrine applies only when federal plaintiffs asserts as their injury legal error or errors by state court, and seek as his remedy relief from state court judgment; doctrine does not apply when injury asserted is

illegal acts or omissions by adverse parties. The doctrine does not apply because of Respondents extrinsic fraud on the state court, new evidence, indispensable parties, new independent extrinsic fraud and constitutional claims.

The Federal Rules of Civil Procedure require petitioners to state a claim upon which relief can be granted. The respondents motions to dismiss does not tests whether complaint affirmatively states a cause of action, and such motion should be denied though complaint be infirm, if it appears that at trial plaintiffs might establish a cause of action. Motions for dismissal are directed at failure to state a claim upon which relief can be granted and not at failure to state a cause of action. Garcia v, Hilton Hotels, 97 F. Supp. 5.

The Rooker-Feldman doctrine and the Supreme Court's appellate jurisdiction over state courts judgments does not stop district courts from exercising subject matter jurisdiction if federal plaintiffs present some independent claims, albeit one that denies a legal conclusion that state

court has reached in case to which he is a party, then there is jurisdiction and state law determines whether defendants prevail under preclusion law. 28 U.S.C.A. Section 1257. See Exxon Mobil Corp. v. Saudi Basic Corp., 125 S. Ct. 1517.

WHEREFORE, Petitioners, Ron Mickens and Gloria J. Mickens pray that this court reverse and remand for a trial.

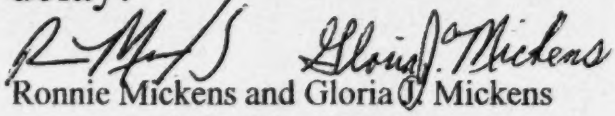
CONLUSION

In the original state court case nos. 1997-CA-0455, the Second District Court of Appeals reversed the final judgment entered on Petitioners Mickens Counterclaim because the relief provided by the judgment was un-requested, undesired, unsupported by the evidence and objected to by both parties. The Second District Court of Appeals did not reverse and remand for a new trial nor did it remand to take new or additional evidence.

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CERTIFICATE

We, Petitioners Ronnie Mickens and Gloria J. Mickens certify that this petition for rehearing is restricted to the grounds specified in Rule 44 paragraph 2 and that it is presented in good faith and not for delay.



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